EDITOR'S NOTE

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No. 84-1509-CFX
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Docketed:
March 25, 1985

Vide:
84-1493

Title: Seattle-First National Bank, Petitioner
v.
Financial Institution Employees of America, etc., et al.

Court: United States Court of Appeals for the Ninth Circuit

Counsel for petitioner: Hutchesor, Mark A.

Counsel for respondent: Solicitor General

Entry	Date	Note	Proceedings and Orders
1	Mar 25 1985	G	Petition for writ of certiorari filed.
2	Apr 18 1985		Brief amicus curiae of Legal Foundation of America filed. VIDED.
3	Apr 19 1985		Memorandum of respondent Financial Institution Employees of America, Local 1182 filed. VIDED.
4	Apr 24 1985		DISTRIBUTED. May 9, 1985
5	May 13 1985		Petition GRANTED. The case is consolidated with 84-1493, and a total of one hour is allotted for oral argument.
			**********
6	Jun 22 1985		Brief amicus curiae of Chamber of Commerce of the US filed. VIDED.
8	Jun 24 1985		Order extending time to file brief of respondent on the merits until July 11, 1985.
9	Jun 27 1985		Brief amicus curiae of National Right to Work Legal Defense Foundation filed. VIDED.
10	Jul 10 1985		Joint appendix filed. VIDED.
11	Jul 11 1985		Brief of petitioner Seattle-First National Bank filed. VIDED.
12	Jul 11 1985		Brief of petitioner NLRB filed. VIDED.
14	Aug 1 1985		Order extending time to file brief of respondent on the merits until September 1, 1985.
15	Aug 30 1985		Order further extending time to file brief of respondent on the merits until September 4, 1985.
16	Sep 4 1985		Brief of respondent Financial Inst. Employees, Local 1182 filed. VIDED.
17	Aug 30 1985		Record filed.
18	Jul 19 1985	G	Motion of petitioners for divided argument filed.
19	Sep 13 1985		Motion of petitioners for divided argument GRANTED.
20	Oct 17 1985		CIRCULATED.
21	Oct 22 1985		SET FOR ARGUMENT, Wednesday, December 4, 1985. (2nd case).
22	Oct 31 1985	X	Reply brief of petitioner NLRB filed. VIDED.
23	Nov 20 1985	X	Reply brief of petitioner Seattle-First Natl. Bank filed. VIDED.
24	Dec 4 1985		ARGUED.

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84-1509

No. 84-——

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SEATTLE-FIRST NATIONAL BANK,
Petitioner,

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO; NATIONAL LABOR RELATIONS BOARD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the National Labor Relations Board acted rationally and in a manner consistent with the National Labor Relations Act when it refused to amend its certification of the exclusive bargaining representative for all unit employees of Seattle-First National Bank based upon the results of an affiliation election in which only some employees—union members—could vote.

LIST OF PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES

Seattle-First National Bank is a wholly-owned subsidiary of Seafirst Corporation, which is, in turn, a wholly-owned subsidiary of BankAmerica Corporation. All of Seattle-First National Bank's subsidiaries are wholly owned, excluding director qualifying shares in certain instances. BankAmerica Corporation's subsidiaries (except wholly-owned subsidiaries) are: Investment Guaranty Corporation, Banca d'America e d'Italia, BancAmerica Options, Inc., BA Australia Limited, BA Finance (Switzerland) Ltd., Bank of America Cameroon S.A., Commercial Bank of Africa Ltd., BA Servicios, S.A., and Consumer Credit Service, Inc. Should the Court desire disclosure of wholly-owned subsidiaries of BankAmerica Corporation, Seattle-First National Bank will supplement its list of subsidiaries and affiliates.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84 - ———

SEATTLE-FIRST NATIONAL BANK,
Petitioner,

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO; NATIONAL LABOR RELATIONS BOARD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Seattle-First National Bank respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 2, 1984.

OPINION BELOW

The opinion of the Ninth Circuit is reported at *Financial Institution Employees of America, Local No. 1182 v. NLRB*, 752 F.2d 356 (9th Cir. 1984). It is found in the Appendix at pp. 1a through 27a. The Ninth Circuit's order denying the Bank's petition for rehearing and rejecting its suggestion for rehearing en banc is reported at

Financial Institution Employees of America, Local 1182 v. NLRB, 750 F.2d 757 (9th Cir. 1984), and is found in the Appendix at pp. 28a through 31a.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on August 2, 1984. The court denied a timely petition for rehearing on December 26, 1984. The Petition for a Writ of Certiorari has been filed within ninety days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Section 1 of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, provides, in pertinent part:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7 of the Act, 29 U.S.C. § 157, provides, in pertinent part:

> Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . . .

Section 9(a) of the Act, 29 U.S.C. § 159(a), provides, in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment....

Section 102.60(b) of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.60(b), provides, in pertinent part:

> *Petition for clarification of bargaining unit or petition for amendment of certification under § 9(b) of the Act; who may file; where to file; withdrawal.* A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer. . . .

STATEMENT OF THE CASE

Seattle-First National Bank is a national banking association engaged in activities in Washington State. From 1938 until 1969, an independent association represented the Bank's employees. This association in 1969 affiliated with the Marine Engineers Beneficial Association ("MEBA"). A year later, the National Labor Relations Board conducted an election in which employees ousted MEBA in favor of the Firstbank Independent Employees Association (the "Independent"), an unaffiliated entity, which was certified as the exclusive bargaining representative of unit employees on November 30, 1970. In November 1971, the Bank and the Independent negotiated a three year agreement. A second three year contract was entered into in August of 1974 and ultimately expired on October 30, 1977. Bargaining

between the Bank and the Independent for a new contract began in the summer of 1977 and extended into early 1978.

By letter dated January 6, 1978, the Independent gave notice of its intent to submit to its membership the question of an affiliation with the Retail Clerks International Union ("RCIU"). The Independent's constitution limited the privilege of voting to members "in good standing on the last working day of the month prior to the notice of election." Nevertheless, the Independent encouraged nonmembers to join the union and vote in the affiliation election, provided they paid one month's dues prior to January 19, 1978. Unit employees who did not join the Independent as of that date were excluded from the vote, even though the union knew that applicable precedent required their participation. *See Jasper Seating Co.*, 231 N.L.R.B. 1025 (1977.) As a consequence, although the Independent represented 4,790 unit employees, only 2,624 ballots were mailed on February 5, 1978.[1] Those voting in favor of affiliation numbered 1,206, 25.17% of the bargaining unit. Those opposed and those not permitted to vote amounted to 2,939 employees, or 61.4% of the unit. Based on these results, the Independent's officers applied for a charter from the RCIU, which was issued effective April 1, 1978.

On June 9, 1978, the RCIU affiliate filed a petition with the Board to amend the existing certification of bargaining representative by substituting Financial Institution Employees of America, Local 1182, chartered by Retail Clerks International Union, AFL-CIO ("Local 1182") for the Independent. The Bank resisted the petition, ar-

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[1] It is not clear that the Independent had this many members. In January, 1978, only 1,569 members paid monthly dues. Voters included numerous individuals who had been on dues checkoff prior to October 15, 1977, but who had not subsequently paid dues. The union conceded that it did not know how many of these employees considered themselves members.

guing *inter alia* that (1) the affiliation election could not serve as the foundation for an amended certification under *Jasper Seating* because the Independent had deprived more than 2,000 represented employees of the opportunity to vote; and (2) the certification could not be amended without a Board-conducted election because the affiliation had created a new and different union, raising a question concerning representation that only the Board could resolve. The Board rejected these arguments and on April 5, 1979, issued a decision amending the certification as requested. App. 49a-54a; *Seattle-First National Bank*, 241 N.L.R.B. 751 (1979). The Bank thereafter refused to bargain with Local 1182, asserting the invalidity of the amended certification. Following unfair labor practice proceedings, the Board on September 28, 1979, issued a decision and order finding that the Bank had violated the Act by reason of the refusal to bargain. App. 39a-48a; *Seattle-First National Bank*, 245 N.L.R.B. 700 (1979).[2]

The Bank sought review of the Board's decision in the Ninth Circuit. *Seattle-First National Bank* v. *NLRB*, No. 79-7515 (9th Cir.). While the Bank's petition was pending, the United States Court of Appeals for the Fifth Circuit issued its decision in *Amoco Production Co. v. NLRB*, 613 F.2d 107 (5th Cir. 1980), remanding that case to the Board for further consideration of factual issues related to the continuity of a bargaining representative after affiliation. Because the Board had relied upon *Amoco Production Co.* (*Amoco III*), 239 N.L.R.B. 1195 (1979), in granting Local 1182's petition for an amended certification, it asked that the Ninth Circuit remand this case for further consideration in connection

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[2] Before disposition of the unfair labor practice charge, the RCIU merged with the Amalgamated Meat Cutters and Butcher Workmen to form the United Food and Commercial Workers International Union (the "UFCW"). App. 39a-40a, n.1.

with the Fifth Circuit remand. On June 27, 1980, the Ninth Circuit complied with the request.

On remand, the Board reversed its unfair labor practice determination and withdrew the amended certification. Following the reasoning it adopted in *Amoco Production Co.* (*Amoco IV*), 262 N.L.R.B. 1240 (1982), the Board held that the affiliation election could not serve as the foundation for an amended certification because it had excluded nonmember unit employees from the vote, in violation of fundamental democratic due process standards. App. 33a-37a; *Seattle-First National Bank*, 265 N.L.R.B. 426 (1982).

Local 1182 filed a petition for review in the court below. On August 2, 1984, a panel of the court of appeals, Judge Wright dissenting, granted the petition for review and remanded the case, ruling that the Board could not deny a petition to amend its certification solely because the union had excluded many of the employees it represented from the decision to seek the amendment. App. 1a-27a. The Bank petitioned for rehearing on August 16, 1984, suggesting rehearing en banc. On December 26, 1984, the Ninth Circuit denied the petition for rehearing and rejected the suggestion for en banc consideration. Judges Kennedy, Sneed, Anderson, Hall, Poole and Norris dissented from the denial of rehearing en banc. App. 29a-31a.

REASONS FOR GRANTING THE WRIT

The decision below directly conflicts with the decision of another court of appeals that approved the Board's policy requiring evidence of employee consent as a prerequisite to an amendment of union certification. The importance of this issue in a time of union centralization makes intolerable the resulting uncertainty, which only this Court can resolve. Furthermore, the decision below impairs the fundamental national labor policy, recognized in decisions of this Court, protecting the "full free-

dom" of all employees to select the entity that will serve as their exclusive bargaining representative. In concluding otherwise, the court below engaged in an independent balancing of assertedly conflicting policies and showed no deference to the Board. It thus departed from this Court's recognition of the Board's primary responsibility for protecting employee free choice. Accordingly, review on certiorari is merited under Rule 17.1 of the Rules of the Supreme Court.

I. THE DECISION BELOW CREATES A CONFLICT AMONG THE CIRCUITS ON AN ISSUE OF IMPORTANCE IN ADMINISTRATION OF THE ACT.

The Board in *Amoco IV*, 262 N.L.R.B. 1240, held that it would not amend its statutory certification of an exclusive bargaining representative based solely upon an affiliation election in which only some represented employees—union members—could participate. It rested its decision on the premise

> that, in order to provide adequate due process safeguards in an affiliation election, all unit employees, whether union members or not, must be permitted to participate and vote in an affiliation election.

262 N.L.R.B. at 1241. Finding that the Board "clearly articulated reasonable grounds for" this policy, the United States Court of Appeals for the Fifth Circuit in *Local 4-14, OCAW v. NLRB*, 721 F.2d 150 (5th Cir. 1983), affirmed the Board:

> [W]e are unable to say that the general ruling that now requires the participation of nonunion members in an affiliation election is irrational or inconsistent with the Act, or that it is beyond the wide discretion of the Board to establish procedures in an affiliation election that will ensure the fair and free choice of the bargaining representative of all the employees.

721 F.2d at 152-153.

The Board applied the *Amoco IV* principle here. *See* App. 35a. The court below, however, rejected the Board's rule, finding it "irrational and inconsistent with the National Labor Relations Act." App. 11a. Judge Wright disagreed, alluding to the Fifth Circuit's decision and finding that "[a]n intercircuit conflict over the rationality of the Board's decision is unwarranted." App. 25a (Wright, J., dissenting). Similarly, Judge Kennedy, with whom Judges Sneed, Anderson and Hall joined in dissenting from denial of rehearing en banc, concluded that "[n]either the Board in announcing the rule nor the Fifth Circuit in sustaining it acted outside the bounds of reason." App. 30a. Judge Norris, joined by Judges Poole and Hall, also dissented from denial of rehearing en banc, agreeing "with the Fifth Circuit that the rule falls within the bounds of NLRB discretion." App. 31a (citation omitted).

By creating an intercircuit conflict, the decision below leaves in doubt the scope of employee consent that the Board may require before it will amend its certification based upon a union affiliation. The resulting confusion is intolerable, for the movement toward union centralization and consolidation requires a clear rule to guide unions, employees, and employers. Between 1979 and June of 1984, more union mergers and affiliations occurred than in any similar period since 1955. Adams, *Labor Organization Mergers 1979-84: Adapting to Change*, 107 Monthly Lab. Rev. No. 9, Sept. 1984, at 21. Most of these combinations were, like the affiliation here, "the result of an absorption of a small labor organization by a much larger one." *Id.*[3] Nothing sug-

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[3] Adams analyzed thirty selected "mergers," which were defined to include affiliations. This constitutes "fully a third of all [mergers] that have occurred since the A.F.L. and C.I.O." combined in 1955. Raskin, *Labor's Grand Illusions*, N.Y. Times Magazine, February 10, 1985, at 52, 67, col. 1. Eighteen mergers involved the absorption of one union by another at least twenty times its size. Three of these involved the international affiliate of Local 1182. Adams, *supra* at 23-24.

gests that this trend toward centralization will abate, rendering it essential that this Court lend finality to the Board's announcement of the evidence it will require before amending its certification.[4]

II. THE DECISION BELOW VIOLATES THE FUNDAMENTAL NATIONAL LABOR POLICY PROTECTING THE "FULL FREEDOM" OF EMPLOYEES TO SELECT THEIR BARGAINING REPRESENTATIVE.

Congress has declared that national labor policy requires protection of "the exercise by workers of *full freedom* of association, self-organization, and designation of representatives of their own choosing . . ." § 1 of the Act, 29 U.S.C. § 151 (emphasis added). Congress thereby expressed its intent that employees, like voters in governmental elections, would be guided solely by their own good judgment in choosing their statutory bargaining representative, free from the dictates of those who would profess to have their best interests at heart. The decision below would, perhaps unwittingly, undermine employees' "full freedom" of choice by conferring upon the Board and the courts, rather than upon affected employees, the right to determine whether a change in the certification of a bargaining representative warrants an expression of employee consent. This Court should review the deci-

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[4] The importance of the Board's *Amoco IV* rule is illustrated by its application in several recent cases, not all of which concern affiliations. *See May Department Stores Co.*, 268 N.L.R.B. 979 (1984) (affiliation of multi-unit independent union with UFCW); *F. W. Woolworth Co.*, 268 N.L.R.B. 805 (1984) (merger of two UFCW locals); *Furr's Cafeterias, Inc.*, 268 N.L.R.B. 988 (1984) (merger of two UFCW locals); *1820 Central Park Avenue Restaurant Corp. d/b/a Charlie Brown's*, 271 N.L.R.B. No. 68 (July 25, 1984) (division of local into two locals). The *May Department Stores* and *F. W. Woolworth* cases are now before courts of appeal on the UFCW's petitions for review. *United Food & Commercial Workers Local 568 v. NLRB*, No. 84-1243 (D.C. Cir.); *United Retail Workers Union Local 881 v. NLRB*, No. 84-2000 (7th Cir.).

sion below because of the importance of this issue in administration of the Act.

A. This Court Has Recognized Employees' Absolute Right to Choose Their Bargaining Representative.

This Court has not hesitated to protect the unfettered right of employees to choose the entity that will act as their exclusive bargaining agent. In *Hill v. Florida*, 325 U.S. 538 (1945), the Court considered a Florida statute that imposed licensing and reporting requirements on unions and their business agents. Justice Black, writing for the majority, emphasized the broad scope of employee discretion that Congress intended:

> The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining, and to protect the "full freedom" of workers in the selection of bargaining representatives of their own choice. . . . Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide.

Id. at 541. The Court thus held that the Wagner Act preempted the Florida statute, concluding that "the 'full freedom' of employees in collective bargaining which Congress envisioned as essential to protect the free flow of commerce among the states would be, by the Florida statute, shrunk to a greatly limited freedom." *Id.* at 542.

Justice Black's expansive view of employee freedom in designating bargaining representatives remains a vital principle of national labor policy. In *Brown v. Hotel and Restaurant Employees Local 54*, 104 S.Ct. 3179 (1984), the Court upheld a New Jersey statute that restricted the class of persons eligible to hold office in unions representing casino employees. Although characterizing the right to select union officials as "less than absolute," the majority emphasized "that this conclusion does not impli-

cate the employees' express § 7 right to select a particular labor union as their collective bargaining representative . . . ." *Id.* at 3190. Justice White, joined in dissent by Justices Stevens and Powell, agreed that employees have an "absolute § 7 right to choose which labor organization will act as their bargaining representative . . . ." *Id.* at 3192-93, n.3. Furthermore, the dissent observed that even "a nonunion employee in an agency shop retains his § 7 right to participate in the selection of the bargaining representative," though he may forfeit his right to participate in certain decisions delegated to the bargaining representative. *Id.*

The fact that an employee is represented by a union to which he does not belong, then, does not limit his "full freedom" to choose a bargaining representative. *See* § 7 of the Act, 29 U.S.C. § 157 (granting employees "the right to refrain from" union activities). In contrast to the decision below, the Board's ruling here recognized this fundamental principle.

B. The Rule Applied by the Board in This Case Protects Employees' Full Freedom in Designating Their Bargaining Representative.

Section 7 of the Act implements the protection of employees' "full freedom" of association by guaranteeing their right "to bargain collectively through representatives of their own choosing." 29 U.S.C. § 157. Representatives chosen freely

> by the majority of employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining . . . .

§ 9(a) of the Act, 29 U.S.C. § 159(a). Although less formal methods exist, a Board-conducted election is the preferred method of determining exclusive representative status. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969). Thus, when the Board finds that "a question of

representation exists"—that is, when it determines that there is a question "as to a claimed majority status" of a labor organization, *Standard Oil Co.*, 127 N.L.R.B. 656, 657 (1960) (Leedom, dissenting)—it will supervise an election to resolve the question. *See* § 9(c) of the Act, 29 U.S.C. § 159(c). The Board then "certifies" the results of this election, removing all doubt as to the representative's status. *Id.*

The Act neither provides for nor mentions "amended" certifications of bargaining representatives after an affiliation. However, the Board traditionally has permitted amendments without a supervised election provided there is an "absence of a question concerning representation." 29 C.F.R. § 102.60(b). Although this rule, which the court of appeals accepted (*see* App. 8a), does not demand adherence to any rigid formula, it logically requires that the union seeking the amendment demonstrate an absence of doubt as to its majority support. *See J. H. Day Co.*, 204 N.L.R.B. 863 (1973) (amended certification granted only when affiliation procedures "substantially eliminate the possibility of a question concerning representation"). The Board's duty to protect employee free choice compels this requirement. Because the Board may issue a statutory certification only upon being satisfied that a bargaining representative has been freely chosen by a majority of unit employees, the petitioning union must show that the change in designation accomplished by the amendment enjoys majority support.

When an affiliation takes "place under circumstances that do not indicate that the change reflected a majority view," the Board has found a question concerning representation, i.e., a doubt as to majority status. *North Electric Co.*, 165 N.L.R.B. 942 (1967). Accordingly, "the factor of primary importance is whether the employees have had the opportunity to pass on the change of representative." *Newspapers, Inc.*, 210 N.L.R.B. 8, 9 nn. 3-4 (1974), *enf'd*, 515 F.2d 334 (5th Cir. 1975). If that op-

portunity has not been given, the Board cannot be certain that the petitioning union has the majority support that Congress required as a predicate to statutory certification. This uncertainty may be resolved only through a Board-conducted election under Section 9(c) of the Act, 29 U.S.C. § 159(c).[5]

The Board has labeled this examination of employee support a "due process" inquiry. In 1977, the Board held that due process required that nonunion unit employees be "given an equal unqualified opportunity to participate in [an] affiliation vote." *Jasper Seating Co.*, 231 N.L.R.B. 1025, 1026 (1977). The Board thus announced that it would *not* amend certifications based upon affiliation votes that excluded nonunion employees.[6]

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[5] In addition, the Board will inquire into the "continuity" between the certified union and the union seeking the amended certification. If that inquiry shows that the petitioner is a "new and different" union, the Board must conduct a supervised election before issuing its certification. *Standard Oil Co.*, 127 N.L.R.B. 656 (1960). At least one court of appeals has indicated that an affiliation of an independent with a large international union creates a "new and different" union. *American Bridge Div., United States Steel Corp. v. NLRB*, 457 F.2d 660 (3d Cir. 1972); *Sun Oil Co. of Pennsylvania v. NLRB*, 576 F.2d 553 (3d Cir. 1978). Because the Board found the scope of franchise too limited in this instance, it did not reach the continuity question in its 1982 decision. The court of appeals declined to do so as well. App. 6a, n.4.

[6] Although one Board member concurred on other grounds, he too condemned members-only voting. *Jasper Seating*, 231 N.L.R.B. at 1027 (Penello, concurring). Prior to *Jasper Seating*, the Board limited its consideration of due process to a review designed to assure itself that the union's affiliation procedures were not "so lax or 'substantially irregular' as to negate the validity of the election . . . ." *Hamilton Tool Co.*, 190 N.L.R.B. 571, 575 (1971). Peculiarly, however, the Board had held, over vigorous dissent, that certifications could be amended based upon union-conducted affiliation votes that excluded represented employees who were not union members. *East Ohio Gas Co.*, 140 N.L.R.B. 1269 (1963) (Rodgers, dissenting); *North Elec. Co.*, 165 N.L.R.B. 942 (1967)

Jasper Seating constituted the governing precedent when Local 1182 conducted its limited franchise election in early 1978. However, by the time this case reached the Board in 1979, it had overruled *Jasper Seating* in *Amoco III*, 239 N.L.R.B. 1195 (1979), *remanded* 613 F.2d 107 (5th Cir. 1980), prompting vigorous protests by Board Members Jenkins and Penello. *See Providence Medical Center*, 243 N.L.R.B. 714, 716, 718 (1979) (Jenkins and Penello, dissenting separately).[7] While this case was pending on remand in 1982, the Board returned to the rule of *Jasper Seating*, holding that all unit employees must be permitted to voice their preferences before the statutory certification of their exclusive bargaining representative may be changed. The Board reasoned:

> If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted that employees in a bargaining unit cannot be com-

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(Jenkins and Zagoria, dissenting); *Hamilton Tool Co.*, 190 N.L.R.B. 571 (Jenkins, dissenting); *Bear Archery, Div. of Victor Comptometer Corp.*, 223 N.L.R.B. 1169, 1172 (1976) (Walther, dissenting), *enforcement denied*, 587 F.2d 812 (6th Cir. 1977).

[7] At approximately this same time, scholarly opinion began to divide sharply over the scope of consent required by the Act—a division that has widened with time. *Compare* Note, *Union Mergers and the Amendment Certification Procedure*, 28 Cath. U. L. Rev. 587, 603 (1979) (advocating participation of all unit employees in merger and affiliation elections) *and* R. Williams, *NLRB Regulation of Union Bargaining Rights When Affiliation Changes* (U. Pa. 1982) (arguing that no amendment of certification should be permitted absent a Board-conducted election) *with* Comment, *Union Affiliations and Collective Bargaining*, 128 U. Pa. L. Rev. 430, 467 (1979) (asserting that nonmembers need not be permitted to vote) *and* Hale, *Union Affiliations: Examination of the Governing NLRA Standards*, 3 Det. C. L. Rev. 709, 742 (1983) (arguing that no affiliation election is necessary to accommodate employee free choice).

> pelled to vote, they can, at the very least, be afforded *the opportunity to vote.* It appears basic to the collective bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection.

Amoco IV, 262 N.L.R.B. at 1241, *quoting North Electric Co.*, 165 N.L.R.B. at 944 (Jenkins and Zagoria, dissenting) (emphasis in original). The Board thus found its rule necessary to protect the "basic" right of employees to choose their representative. To hold otherwise, the Board observed, "would deprive *employees* of the benefits guaranteed by the Act." *Id.* at 1242 n.12 (emphasis in original).

C. The Decision Below Impairs Employees' Absolute Right to Choose Their Bargaining Representative.

The simplicity and logic of the Board's rule cannot be directly assailed. Rather than do so, the decision below concluded that procedures followed prior to *Jasper Seating* "adequately protected the critical rights of employees to be represented by a union selected by a majority of employees in the unit . . . ." App. 20a. In fact, however, the procedures that the court of appeals advocated curtail employees' "critical rights" by allowing unions, the Board, and the courts to decide on an *ad hoc* basis that it is unnecessary to permit the exercise of those rights.

The court below relied upon the Board's inquiry into what is commonly known as "continuity of representation" to protect employees' Section 7 rights.[8] *See* n.5,

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[8] The court of appeals also found that decertification procedures adequately protected employees' Section 7 rights. This conclusion is repugnant to the Act. The court's rationale would justify virtually any impairment of free choice simply because employees

supra. Even when employees have acquiesced in affiliation through privately conducted elections, the Board has refused to amend its certification if the purported successor lacks continuity with the certified entity—*i.e.*, if it is a "new and different union." *See Standard Oil Co.*, 127 N.L.R.B. 656 (1960); *see also Independent Drug Store Owners*, 211 N.L.R.B. 701, 702 n.4 (1974), *aff'd sub nom. Retail Store Employees, Local 428 v. NLRB*, 528 F.2d 1225 (9th Cir. 1975) (amended certification denied despite approval of merger by unit employees). When continuity of representation is absent, the Board has held that the integrity of its certification requires that it supervise an election, rather than accepting the result of a less formal tally.

The court below asserted that this procedure protected employees by requiring an election whenever the Board concluded that a "question concerning representation" arose upon affiliation. App. 20a. Thus, the court would prohibit the Board from requiring evidence of employee consent so long as it finds only an "insubstantial change in the certified bargaining representative" as a result of affiliation. App. 20a. Under the decision below, then, employees do not have *full* freedom to participate in a change in their designated representative. Instead, their freedom is "shrunk to a greatly limited freedom," *Hill v. Florida*, 325 U.S. at 542, which may be exercised *only* when the Board decides that, in its view, the amended certification would accomplish such a substantial change as to raise a question concerning representation.

"genuinely disgruntled" by their deprivation of rights could invoke decertification remedies. App. 21a. Furthermore, the cumbersome decertification procedure is appropriate only after unit employees have freely selected their representative. *See* 29 U.S.C. § 159(c)(1)(A)(ii) (decertification petition may assert that certified union "no longer" enjoys majority support). The statute presumes an initial unfettered expression of views, which is precisely what the rule applied here protects.

The court of appeals did not, however, explain why the Board, rather than affected unit employees, should be empowered to assess the substantiality of the change in representative. The Act provides no explanation. Rather, it contemplates that employees will have unfettered freedom of choice, that "[t]heir own best judgment, not that of someone else, [will] be their guide." *Hill v. Florida*, 325 U.S. at 541. Thus, in this case, it is not for Local 1182, the Board, or the courts to decide whether the difference between the Independent and Local 1182 is significant enough to warrant a difference in employee support. All unit employees have "full freedom" to participate in that decision. By depriving nonunion employees of that freedom, the decision below would sharply curtail their fundamental Section 7 rights in violation of the principles enunciated by this Court in *Hill*. This Court therefore should review this case to assure that the policies underlying the Act are not impaired.

III. THE DECISION BELOW DEPARTS FROM THIS COURT'S DECISIONS BY SHOWING NO DEFERENCE TO THE BOARD'S ADOPTION OF SAFEGUARDS TO ENSURE THE FREE CHOICE OF BARGAINING REPRESENTATIVES.

The Board bears the responsibility of implementing the fundamental national policy of protecting employee freedom of choice. The means that it chooses in doing so rest within its sound judgment, subject to only limited review:

> Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives by employees. [Citations omitted]

NLRB v. A. J. Tower Co., 329 U.S. 324, 330 (1946). Ignoring this fundamental precept of the Act, the court below independently balanced the Section 7 rights recognized by the Board against the assertedly conflicting poli-

cies of noninterference in union internal affairs and of preserving the stability of bargaining relationships. The court thus usurped the Board's function as guardian of employee free choice, in violation of principles of judicial review established by this Court.

A. The Court Below Impermissibly Determined for Itself That There Is No Need for the Policy the Board Followed Here.

In assessing the necessity for the Board rule applied here, the court below not only reached a conclusion at odds with national labor policy (*see* pp. 15-17, *supra*), it also stepped outside the bounds of its proper role in reviewing the Board. Rather than evaluating the Board's decision for rationality and consistency with the Act, the court of appeals undertook an independent analysis of the need for the Board's policy favoring full employee participation in decisions to change a bargaining representative. It concealed this *de novo* review by asserting the irrationality of adopting a new procedure when the old one is, in the court's judgment, "effective." App. 20a.

The court below thus found the Board's policy "irrational" simply because it failed to discern an improvement over prior Board rules. Such a broad use of the term "irrational" would, however, permit unfettered reassessment of every administrative decision and circumvent the deferential standard of review that this Court has prescribed in cases arising under the Act. As Judge Kennedy observed in dissenting from denial of en banc rehearing:

> Reason is a juridical concept essential for the constancy of our decisions, and we undermine it if we use the term "irrational" to express disagreement with a proposition supported by articulated premises within the boundaries of tenable argument.

App. 29a.

The refusal of the court below to acknowledge the limited scope of its task is reason enough to review this case, for this Court has recognized that lower courts cannot reject Board policy based upon an independent appraisal of "need." In *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), for example, the court of appeals independently evaluated the need for the Board's new rule granting employees the right to union representation at investigatory interviews. This Court rejected the lower court's effort to substitute a judicial judgment for the Board's:

> The Court of Appeals impermissibly encroached upon the Board's function in determining for itself that an employee has no "need" for union assistance at an investigatory interview. . . . It is the province of the Board, not the courts, to determine whether or not the "need" exists in light of changing industrial practices and the Board's cumulative experience in dealing with labor-management relations.

420 U.S. at 266. The court below likewise "encroached upon the Board's function" when it concluded that there was no "need" for a unit-wide vote protecting the "full freedom" of unit employees to select their bargaining representatives. The Board, as the entity charged with issuing and policing certifications, has the duty of determining the procedures necessary to assure protection of statutory rights. The court below departed from this Court's decisions in failing to accord deference to the Board's determination of the need for its policy.

B. The Decision Below Improperly Rejects the Board's Conclusion That an Amendment of Certification Does Not Implicate Solely Internal Union Interests.

The Board has concluded that an effort to obtain its approval of an affiliation implicates its statutory certification responsibilities and does not involve solely internal union interests. As the Board observed in *Amoco IV*:

> If, in fact, union affiliations are internal union matters why does the Board even look to see if adequate due process has been achieved? The obvious answer to that question is that once either party raises the question of affiliation . . . it is incumbent upon the Board, before it places its imprimatur on an affiliation election, to assure that that election meets adequate due process standards.

262 N.L.R.B. at 1241. The court below, however, independently analyzed this question, gave no deference to the Board's conclusion, and rejected its reasoning. It thereby intruded upon the province of the Board as the entity responsible for balancing whatever conflicting interests may be implicated by a policy question arising under the Act.

The court of appeals reasoned that an amended certification proceeding implicates only "internal union" interests, provided there is "continuity" between the certified union and the newly affiliated union. It therefore accepted "the union's characterization of all affiliation decisions as internal union affairs . . . ." App. 11a-12a, n.9. Relying upon case law pertaining to discipline of union members, *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *NLRB v. Boeing Co.*, 412 U.S. 67 (1973), election of union officers, *Steel Workers v. Sadlowski*, 457 U.S. 102 (1982), and limits on piece work pay received by union members, *Scofield v. NLRB*, 394 U.S. 423 (1969), the court below noted the policy against interference in internal union affairs. It rejected the Board's decision here as violating that policy. App. 11a-17a.

However, the Board did not, as the decision below appears to assume, even purport to consider the effect of an affiliation on a union as a voluntary, private organization. The Board's ruling dealt only with the affiliate's request that the Board certify Local 1182 as the statutory representative of all unit employees. *See* App. 30a

(Kennedy, J., dissenting from denial of en banc rehearing.) This request, by definition, was entirely *external* to the union's powers as a voluntary association of dues paying members. In ignoring this fact, the decision below blurred "the important distinction between a union's status as a voluntary organization and its status as a certified or recognized bargaining agent." R. Williams, *NLRB Regulation of Union Bargaining Rights When Affiliation Changes* 24 (U. of Pa. 1982).

The failure of the court of appeals to differentiate between a union's dual roles explains its otherwise unaccountable reliance on *Allis-Chalmers*, *Boeing*, *Sadlowski*, and *Scofield*, none of which even remotely relates to a union's representative status.[9] In contrast, use of an affiliation election as the lever for a certification amendment brings into play the union's role as exclusive representative for *all employees*, members and nonmembers alike. *See* § 9(a) of the Act, 29 U.S.C. § 159(a); *Abood v. Detroit Board of Education*, 431 U.S. 209, 221 (1977) (duty of fair representation extends to nonunion employees). When a union is designated to serve in this capacity, "the individual employee's power to order his own relations with his employer" is extinguished; the

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[9] This failure also led to a revealing logical error. The court below conceded that the Board must ascertain whether the petitioning union can demonstrate "the absence of a 'question concerning representation'" raised by its proposed certification amendment. App. 8a; *see* 29 C.F.R. § 102.60(b). In resolving this question, the court reasoned, the Board should inquire into whether "the [affiliation] decision reflected the wishes of the union's members." App. 8a; *see also* App. 22a (due process inquiry must "protect union members' rights . . . to be represented by the organization of their choice"). But the sentiment of union members is utterly irrelevant to questions concerning representation. The Act protects *employee* freedom of choice; it does not mention free choice of *union members*. Employees retain their Section 7 right to choose their bargaining representative notwithstanding their nonunion status. *See Brown v. Hotel Employees Local 54*, 104 S.Ct. at 3192-93 n.3 (White, J., dissenting).

chosen union under federal law may bind even a nonmember to waivers of statutory rights, terms and conditions of employment, and provisions for processing his grievances. *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. at 180. Consequently, the designation of an exclusive bargaining representative, whether through an amendment of certification or some other procedure, "affects the interests of all employees in the bargaining unit directly and equally, whether they choose to be union members or not." Williams, *supra* at 25. In concluding that an amendment of certification is an internal union affair, then, the court below rested on an erroneous perception of the issues before the Board.

Even if an amendment of certification implicated internal union interests, however, the court below should not have independently balanced those interests against the national labor policy in favor of employees' "full freedom" of choice. As Judge Wright observed in his dissent, "balancing of interests . . . is the province of the Board, not the courts." [10] App. 25a. The court below thus did not give due deference to the Board's conclusion that the paramount concern was the integrity of its procedure for the "free" selection of bargaining representatives.

Prior decisions of this Court leave no doubt that an exceptional degree of deference was appropriate here. When internal union interests clash with the Section 7

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[10] The Board, not the courts, has the "primary responsibility" for accommodating conflicts between Section 7 rights and private property interests. *Hudgens v. NLRB*, 424 U.S. 507, 522-23 (1976). The Board, not the courts, must balance legitimate employer interests against employee rights under Section 7. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236 (1963). And the Board, not the courts, has the duty of weighing the Section 7 right of employees to make a "fair and free choice of bargaining representatives" against "the asserted interest of employees in avoiding the problems that union solicitation may present." *NLRB v. Wyman Gordon Co.*, 394 U.S. 759, 767 (1969).

right to designate bargaining representatives, this Court has found the balance to tip in favor of protecting employee free choice. In *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270 (1973), for example, the union waived initiation fees for employees signing recognition slips during an organizational campaign. Involving the financial relationship between the union and its members, the union policy implicated a "legitimate" internal union interest in removing an "artificial obstacle" to union membership. *Id.* at 273-74, n.4 (citation omitted). Because this interest could be met without serving "the additional purpose of affecting . . . the election," *id.*, this Court held that the policy impermissibly conflicted with "[t]he right of a free choice . . . inherent in the principles reflected in § 9(c)(1)(A)." *Id.* at 279.[11]

Similarly, a union's internal interest in affiliation need not impair employees' statutory right to participate in selection of their bargaining representatives. The Board's ruling here preserves a union's right to affiliate or not to affiliate. App. 26a (Wright, J., dissenting). Unlike the rule adopted by the court below, however, it also preserves employees' rights to consent to or refuse to support a change in the statutory certification of their exclu-

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[11] The Court also observed that the initiation waiver policy might conflict with Section 7's guarantee of the right to *refrain* from concerted activity. 414 U.S. at 278-79. The same is true of a policy limiting affiliation votes to members, for it compels nonunion employees wishing to air their views to join the union. *See* App. 14a, n.10. To endorse this procedure "is to shut one's eyes to Section 7 [of the Act] . . . [which] clearly gives employees the choice . . . to refrain from engaging in [union] activities." *Amoco IV*, 262 N.L.R.B. at 1241. Indeed, the Board, with judicial approval, has held that an improper exclusion of nonmembers from a vote violates Section 8(b)(1)(A) of the Act, 29 U.S.C. § 158(b)(1)(A), by coercing them to join a union. *Branch 6000, National Association of Letter Carriers*, 232 N.L.R.B. 263 (1977), *enf'd*, 595 F.2d 808 (D.C. Cir. 1979). Local 1182 engaged in this coercive practice by simultaneously limiting the franchise and urging nonunion employees to join the union in time to vote.

sive collective bargaining representative. The Board's accommodation of these two rights was within its discretion—indeed, it was compelled by the Act. It was not properly subject to the *de novo* review conducted by the court below.

C. The Decision Below Incorrectly Concludes That the Board's Rule Will Interfere With the National Policy in Favor of Stable Bargaining Relationships.

The decision below also relied upon a perceived conflict between the Board's desire to protect Section 7 rights and "the strong national policy of maintaining stability in the bargaining representative . . . ." App. 17a. This concern is illusory, however, for the Board's rule need not ever cause disruption in bargaining relationships. The Board will allow amended certifications if represented employees consent. In the absence of consent, the already certified entity will continue in its representational capacity. If these procedures are followed, all parties rest assured that the true employee representative is acting on employees' behalf. In this sense, the Board's "rule will promote stability more effectively than did its former position." App. 26a (Wright, J., dissenting). Disruption would occur only if the affiliate attempted to proceed as bargaining representative notwithstanding an unwillingness to adhere to the Board's procedures or an inability to garner majority support in the bargaining unit.

In this case, the Independent was aware that *Jasper Seating*, 231 N.L.R.B. 1025, required it to permit all unit employees to vote if it intended the affiliation election to serve as the basis for an amended certification. Nevertheless, the union *chose* to ignore governing law and to exclude nonmembers from all proceedings leading up to the request for an amended certification. The rule did not disrupt the bargaining relationship. The rule allowed no instability so long as it was followed. Only the

Independent's calculated disregard of known prerequisites to an amendment of certification caused this case to exist. The court below thus erred when, by expressing concern over stability, it gave more deference to the Independent's violation of the existing Board rule than it did to the rule itself.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

DATED this 25th day of March, 1985.

Respectfully submitted,

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March 25, 1985

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 82-7736

NLRB Nos. 19-CA-11364, 19-AC-23

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

SEATTLE-FIRST NATIONAL BANK,
Intervenor.

On Petition for Review of an Order of the National Labor Relations Board

Argued and Submitted September 7, 1983

[Filed Aug. 2, 1984]

OPINION

Before: WRIGHT, PREGERSON, and FERGUSON, Circuit Judges.

PREGERSON, Circuit Judge:

The National Labor Relations Board now requires that non-union employees participate in a certified union's internal decision to affiliate with another labor organization before the Board will amend the newly-affiliated union's certification as the unit's exclusive bargaining representative. The question before us is whether the new rule is rational and consistent with the National Labor Relations Act (NLRA). Because the rule fails this test, we grant the union's petition for review and reject the rule.

PROCEDURAL BACKGROUND

A. *Affiliation Decisions and the Board's New Rule*

In this case, an independent, Board-certified union of bank employees, Firstbank Independent Employees Association, voted to affiliate with the Retail Clerks Union (Retail Clerks). In accordance with the independent union's constitution, only union members voted in the affiliation election. Upon a vote favoring affiliation, the union changed its name to Financial Institution Employees of America, Local 1182, chartered by the Retail Clerk's International Union, AFL-CIO.[1] The Board determined that the affiliation did not substantially change the character of the union. *Seattle-First National Bank*, 241 N.L.R.B. 751 (1979). The Board then amended the independent union's certification as the exclusive bargaining representative of the bank's employees to designate the newly-affiliated union as the independent's successor. *Id.* When the employer, Seattle-First National Bank, refused to bargain with the newly-affiliated union, the Board found the Bank guilty of an unfair labor practice and

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[1] After the Board amended the union's certification, the Retail Clerks merged with the Amalgamated Meat Cutters and Butcher Workmen of North America to become the United Food and Commercial Workers International Union, AFL-CIO. The Board accepted this change.

ordered it to bargain. *Financial Institution Employees of America*, 245 N.L.R.B. 700 (1979).

In reaching its decision to amend the union's certification, the Board followed its established practice of conducting "due process" and "continuity" determinations.[2] A "continuity" finding between a pre- and post-affiliation union has traditionally been the prerequisite for the Board's amendment of a union's certification. In this case, the Board found continuity between the pre- and post-affiliation union. 241 N.L.R.B. at 752. In amending the union's certification and ordering the Bank to bargain, the Board specifically relied upon a contemporaneous case, *Amoco Production Co. (Amoco III)*, 239 N.L.R.B. 1195 (1979), in which the Board found continuity despite the fact that non-union members had not been allowed to vote on the affiliation question. In *Amoco III*, the Board stressed that affiliation elections are internal union matters; thus, the Board did not require non-union employees to participate in those elections. Amoco Production Company appealed *Amoco III* to the Fifth Circuit; Seattle-First National Bank appealed the instant case to this circuit.

The Fifth Circuit remanded *Amoco III* to the Board for a statement of facts supporting the Board's affirmative continuity determination. *Amoco Production Co. v. NLRB*, 613 F.2d 107, 112 (5th Cir. 1980). The Board's opinion had failed to set out those facts and the court could not determine whether the Board's continuity finding was supported by substantial evidence. *Id.* After the Fifth Circuit's remand, the Board asked us to remand as

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[2] "Due process" in the context of the Board's review of affiliation decisions is discussed *infra* pp. 8-9, 22-23, and note 6. "Continuity" means that the union, even though newly affiliated with another labor organization, is essentially the same union that the Board originally certified to represent the bargaining unit. *See infra* pp. 9-11 (describing the continuity determination process).

well because our case was analytically linked to *Amoco III*. We complied. *Seattle-First National Bank v. NLRB*, Nos. 80-7004, 79-7515 (9th Cir. June 27, 1980) (order granting Board's motion for remand).

On remand from the Fifth Circuit, the Board, by a 3-2 vote, overruled *Amoco III* and concluded, in *Amoco Production Co. (Amoco IV)*, 262 N.L.R.B. 1240 (1982), that affiliation decisions were *not* internal union matters. The Board held that a unit-wide vote on affiliation was a necessary prerequisite to obtaining an amended certificate showing the new affiliate as the successor bargaining representative. The Board declared that "due process" required a unit-wide vote and because a unit-wide vote had not been taken, the Board did not reach the continuity issue. The Board then revoked its earlier amendment of the union's certification and dismissed the unfair labor practice complaint against the employer, which had been based on the employer's repudiation of the existing contract and refusal to bargain. The union appealed the Board's *Amoco IV* decision to the Fifth Circuit.

Similarly, the Board, by a 3-2 vote, changed its earlier opinion in our case and followed *Amoco IV*. The Board's opinion states that excluding nonmembers from voting in affiliation decisions violates "fundamental due process standards." *Seattle-First National Bank*, 265 N.L.R.B. No. 55, slip op. at 3 (Nov. 18, 1982). The Board revoked the newly-affiliated union's amended certification and dismissed the previously-granted refusal to bargain/unfair labor practice charge against the bank. The Board did not reconsider whether continuity existed between the pre- and post-affiliation union. The union petitioned for review.

In the *Amoco IV* appeal, the Fifth Circuit affirmed the Board's new ruling after acknowledging the existence of "strong arguments to the contrary." *Local Union No. 4-14 v. NLRB*, 721 F.2d 150, 152-53 (5th Cir. 1983). In

a brief opinion, the court deferred to the Board, explaining, "we are unable to say that the general ruling that now requires the participation of nonunion members in an affiliation election is irrational or inconsistent with the Act . . . ." *Id.*

B. *Effect of the Board's New Rule*

Unless a union puts an affiliation decision to a vote of all employees in the bargaining unit, the Board will not consider whether sufficient continuity exists between a pre- and post-affiliation union to justify amending the union's certification. Generally, the Board will not enforce an employer's duty to bargain in good faith under § 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5) (1982), unless the newly-affiliated union has had its certificate amended. This means that under the Board's new rule an employer may, with impunity, refuse to bargain with any union that affiliates without permitting non-union employees to participate in what until recently was considered an internal union affair. In effect, the Board now requires that *all* union affiliation decisions be put to a vote of all employees, union and non-union, in the bargaining unit.[3]

The Board changed the rule because it now believes that affiliation is not an internal union matter. Instead, the Board suggests that affiliation by its very nature implicates the guaranteed rights of all employees to a bargaining representative selected by the majority. Under the Board's new approach, an affiliation decision will always call a union's continuing majority status into question.

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[3] See, for example, *Amoco IV*, in which the Board refused to amend the union's certification because non-union employees were not allowed to vote in an affiliation decision. There, even if all non-union employees had voted and all of them had voted against affiliation the unit as a whole would have approved the affiliation.

STANDARD OF REVIEW

The Board's decision in this case announces an altered interpretation of the National Labor Relations Act.[4] In reviewing such decisions, we accord the Board's interpretation substantial deference and review the decision for "rationality and consistency with the Act." *NLRB v. Nevis Industries, Inc.*, 647 F.2d 905, 909 (9th Cir. 1981); *see Ford Motor Co. v. NLRB*, 441 U.S. 494, 497 (1979); *Machinists Local 1327 v. NLRB*, 725 F.2d 1212 (9th Cir. 1984). Therefore, we will uphold the new rule if it is rational and consistent with the NLRB, and we will reject the rule if it is not.

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[4] The Bank and the amicus U.S. Chamber of Commerce discuss extensively the factual merits of the union's actual continuity. If we grant the union's petition, the Bank suggests that we should deny the union amended certification because of the substantial lack of continuity between the pre- and post-affiliation union. The Chamber of Commerce, on the other hand, suggests that we should consider the factual merits first, and therefore need not review the rule because the post-affiliation union allegedly differs substantially from the pre-affiliation union. We are unable to comply with either request. When the Board, in the wake of the Fifth Circuit's remand of *Amoco III*, asked us to remand the case in which the Board considered the continuity factors, we complied. Thus, we are without power to consider the factual continuity question because such determinations are the province of the Board, subject only to our review to ensure that those decisions are based on "substantial evidence." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *Retail Store Employees Local 428 v. NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975).

The union also asks us to consider the factual merits and then to reinstate the Board's prior continuity finding, the earlier amended certification, and the unfair labor practice finding against the Bank. As we have just explained, the case in which the continuity decision favorable to the union was made is no longer before us. The case before us involves only the Board's new rule. *See also infra* note 16.

DISCUSSION

A. *Background: Certification, Affiliation, and Continuity Decisions*

Section 7 of the NLRA guarantees employees the right "to bargain collectively through representatives of their own choosing." 29 U.S.C. § 157 (1982). Section 9(a) of the NLRA mandates that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees . . . shall be the exclusive representatives" of the unit's employees. 29 U.S.C. § 159 (a) (1982). Once the Board is satisfied that a union is the chosen representative of a unit's employees in accordance with § 7,[5] the Board will certify the union as the unit's exclusive bargaining representative under § 9(a). A union seeks certification as the exclusive bargaining representative for many reasons, not the least of which is to gain the NLRA's protection if the employer commits an unfair labor practice. *See, e.g.*, 1 C. Morris, *The Developing Labor Law* 341 (2d ed. 1983).

Under certain circumstances, a certified bargaining representative may lose substantial support within the union or the unit as a whole. When this happens, the employees, whether union or non-union, may ordinarily petition the Board to decertify the union. 29 C.F.R. § 101.17 (1983). If, after investigating the petition, the Board determines that "a question of representation" exists, the Board must hold a hearing to decide whether the union should continue to represent the unit. NLRA § 9(c)(1)(A)(ii), 29 U.S.C. § 159(c)(1)(A)(ii) (1982). At least 30% of the unit's employees' must support the

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[5] For example, the Board may be satisfied after a Board-supervised election or after the employer's voluntary acceptance of authorization cards in favor of the union signed by a majority of the unit's employees.

decertification petition before the Board will hold a new representation election. 29 C.F.R. § 101.18.

As the Board has recognized, an independent union may decide to affiliate with a national or international union for diverse reasons. *See Amoco III*, 239 N.L.R.B. at 1195. These include access to an enhanced financial base, greater bargaining expertise, and increased bargaining strength. In the past, an independent union wishing to affiliate would first hold an election among its members according to procedures established in the union's constitution and bylaws. If the members voted to affiliate, the union would then petition the Board to amend the union's certification to designate the newly-affiliated union as the exclusive bargaining representative of the unit under § 9(a). In the absence of a "question concerning representation," the Board would amend the certification. *See* 29 C.F.R. § 102.60(b).

Before altering its position in *Amoco IV*, the Board adhered to the following procedure to determine if a "question concerning representation" had arisen. The Board first inquired into whether the affiliation decision was made with sufficient "due process" to ensure that, as a threshold matter, the decision reflected the wishes of the union's members. The Board inquired into whether the affiliation election was "conducted under democratic procedures," with sufficient due process to guarantee that the "election represents the majority view of the *members of the union.*" *NLRB v. Newspapers, Inc.*, 515 F.2d 334, 339 (5th Cir. 1975) (emphasis added). The election procedures must not be so "lax" or "substantially irregular" as to "negate the validity of the election." *NLRB v. Commercial Letter, Inc.*, 496 F.2d 35, 42 (8th Cir. 1974); *see also NLRB v. Bear Archery*, 587 F.2d 812 (6th Cir. 1977) (enforcement of continuity finding denied because of inadequate due process in election procedures). The

due process inquiry has always been used to protect union members' rights in the affiliation decision process.[6]

Once assured that the rights of union members had not been violated, *see, e.g., Amoco III*, 239 N.L.R.B. at 1196, the Board conducted an investigation into whether "continuity of representation" existed between the pre- and post-affiliation union. The continuity inquiry addressed both union members' and non-union members' interests in continued representation by the representative that had been selected by the majority. The Board's inquiry thus focused on whether the union was substantially changed by the affiliation. In the words of the classic formulation of the essential inquiry:

> [T]he right of a successor union to assume the status of a certified bargaining agent held by its predecessor depends on a factual issue—is the new union a continuation of the old union under a new name or affiliation or is it a substantially different organization?

Carpinteria Lemon Association v. NLRB, 240 F.2d 554, 557 (9th Cir. 1956).[7]

In making its continuity determination, the Board considered such factors as continuation of unit autonomy, retention of local officers, and continuation of established

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[6] This is the stage where the Board's new rule would have its impact. The procedural difference between the old and the new rule is the requirement of a unit-wide vote as part of the threshold due process inquiry. *See infra* p. 23.

[7] For an early discussion of the continuity principle, see *NLRB v. Harris-Woodson Co.*, 170 F.2d 720 (4th Cir. 1950). Board decisions on this subject include *Jasper Seating Co.*, 231 N.L.R.B. 171 (1977); *Bear Archery, Div. of Victor Comptometer Corp.*, 223 N.L.R.B. 1169 (1976), *enforcement denied*, 587 F.2d 812 (6th Cir. 1977); *Hamilton Tool Co.*, 190 N.L.R.B. 571 (1971); *North Elec. Co.*, 165 N.L.R.B. 88 (1967); and *East Ohio Gas Co.*, 140 N.L.R.B. 1269 (1963).

union procedures (such as grievance procedures, voting procedures, and bylaws). *Compare Retail Store Employees Union Local 428 v. NLRB*, 528 F.2d 1225, 1228 (9th Cir. 1975) (continuity not found where pre-affiliation union officers no longer participated in actual negotiations over collective bargaining issues with management after affiliation) with *Carpinteria Lemon*, 240 F.2d at 557 (continuity found where only name change occurred), and *Hamilton Tool Co.*, 190 N.L.R.B. 571, 575 (1971) (continuity found where bank accounts, checkoff authorizations, and membership remained the same). So long as continuity existed, the Board considered affiliation decisions as internal union matters that did not necessarily affect the status of the union as the exclusive bargaining representative of its unit.[8]

Thus, the purpose of the due process determination was to protect union members' interests while the purpose of the continuity determination was to protect employees' § 7 and § 9(a) rights by enabling the Board to call a new representation election whenever the affiliation posed a "question concerning representation." Until now, the Board believed that a continuity determination was sufficient to protect employees' § 7 and § 9(a) rights because that process allowed the Board to require a vote, on a case-by-case basis, whenever the Board questioned whether a union's affiliation implicated those rights. When no question regarding due process or representation arose, the Board certified the newly-affiliated union and thus avoided unnecessary interference in a fundamentally internal union matter. Now, however, the Board implies that the continuity determination is inadequate to protect

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[8] There has been a continuing discussion within the Board, however, about whether affiliation decisions are internal union matters. See *Amoco III*, *Amoco IV*, *Jasper Seating Co.*, 231 N.L.R.B. 171 (1977), and *North Electric Co.*, 165 N.L.R.B. 88 (1967), for examples of cases with both majority and dissenting views on this point.

employees § 7 and § 9(a) rights and that both the due process and continuity inquiries must focus on those rights.

B. *Analysis: Why the New Rule Must Be Rejected*

After considering this matter thoroughly, we have concluded that the Board's new rule is irrational and inconsistent with the National Labor Relations Act. At least three reasons compel our conclusion. First, the rule is inconsistent with the longstanding federal labor policy, repeatedly recognized by the Supreme Court, to avoid unnecessary interference in internal union affairs. Second, the rule is inconsistent with the NLRA's primary purpose of promoting industrial peace. Third, the rule is irrational because the Board's existing due process and continuity determination procedures adequately protect employee rights without imposing on union members' rights or otherwise being inconsistent with the NLRA.

1. *The Rule is Inconsistent with the Policy of Noninterference in Internal Union Matters*

The Board's new rule violates the longstanding federal labor policy of avoiding unnecessary interference in internal union affairs.[9] The Supreme Court has repeatedly

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[9] Although the Board's earlier cases characterize affiliation decisions as internal union matters, the Board now suggests that an affiliation by its very nature always implicates employees' § 7 right to choose their bargaining representative. And, because § 9(a) of the NLRA requires that the exclusive bargaining representative of a unit must be chosen by a majority of the employees in the unit, the Board now suggests that *any* affiliation constitutes a sufficient change in the character of the union to call the initial employee choice of bargaining representative into question. The Board's new position is essentially that affiliations are never simply internal union affairs.

The union, on the other hand, argues that affiliation decisions are entirely internal union matters. The union asserts that federal

recognized this policy. *See, e.g., NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *see also NLRB v. Boeing Co.*, 412 U.S. 67 (1973) (Board interference with union rule held unjustified); *Scofield v. NLRB*, 394 U.S. 423 (1969) (same); *cf. United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982) (union rule upheld against challenge by employees). These cases convince us that we should reject the Board's rule because it interferes with the conduct of internal union affairs without any countervailing justification.

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labor policy precludes Board interference in such decisions. *See infra* pp. 12-16 & note 15.

As a practical matter, we believe that affiliation decisions are internal union matters that may in some cases have sufficient external ramifications to call non-union members' § 7 and § 9(a) rights into question. Many affiliation decisions work minimal changes; for example, the decision may involve only a name change. *See, e.g., Carpinteria Lemon Ass'n v. NLRB*, 240 F.3d 554, 557 (9th Cir. 1957) (continuity found where only name change occurred). We cannot see how such a change could be anything other than an internal union affair. Some affiliation decisions may have a significant external impact on the § 7 and § 9(a) rights of all employees in the bargaining unit, as, for example, when the local relinquishes its power to call a strike to the international or when the local authorizes the international to select local officers. *See, e.g., Retail Store Employees Local 428 v. NLRB*, 528 F.2d 1225, 1228 (9th Cir. 1975) (continuity not found where pre-affiliation union officers no longer negotiated collective bargaining matters with management: "This leadership change suggests an absence of continuity where it counts, in a bargaining relationship.").

Even when the affiliation decision results in substantial change in the union, the actual decision to affiliate is internal, but the decision's external ramifications could justify the Board's refusal to amend the union's certification. We therefore accept the union's characterization of all affiliation decisions as internal union affairs, and emphasize that the Board is not justified in interfering with such affairs. The Board can justify its interference only *after* the Board has conducted a continuity determination and finds that a "question concerning representation" exists. The Board's proper function is to decide the matter on a case-by-case basis. *See infra* p. 16 & note 12.

NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967), provides perhaps the strongest statement of congressional intent to limit unnecessary interference in internal union affairs. In upholding a union rule that imposed sanctions on union members who crossed a picket line during a strike, the Court explained the structure of the NLRA, and how its majority rule concept is applied:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. . . . The employee may disagree with many of the union decisions but is bound by them. "*The majority-rule concept is today unquestionably at the center of our federal labor policy.*" "The complete satisfaction of all who are represented is hardly to be expected. . . ."

388 U.S. at 180 (footnotes and citations omitted) (emphasis added). In keeping with this policy, "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents. . . ." *Id.*

In explaining that an element of the "majority rule concept" reserves union decision-making to union members, the Court added that "*nonunion employees have no voice in the affairs of the union.*" 388 U.S. at 191 (emphasis added).[10] The affairs of the union are those that relate

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[10] The *Amoco IV* dissent emphasizes one reason why affiliation decisions are internal union affairs:

> Any tension between the right of members of the unit to a voice in their representation and the right of members of a

to the union's self-goverance. Congress intended to restrict union self-goverance only in very narrow circumstances not present in this case. "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status." 388 U.S. at 195. "[A] union could fine a member [for breaking a union rule] but that same rule could not be enforced by causing the employer to exclude him from the work force or by affecting his seniority . . . ." *Scofield v. NLRB*, 394 U.S. at 428; *see also United Steelworkers v. Sadlowski*, 457 U.S. at 115-19 (discussing congressional intent to limit interference in union self-governance). In *Allis-Chalmers*, the Court further examined the legislative history of the NLRA and found that Congress had repeatedly condemned outside interference in internal union affairs. *See, e.g.*, 388 U.S. at 187-95.

The non-interference policy extends to interference by the Board. When a union rule has not clearly violated a policy of the NLRA, the Court has limited the Board's power to interfere in internal union affairs. *See Scofield v. NLRB*, 394 U.S. at 432 (upholding union rule, enforceable by fines and expulsion, imposing limitation on immediate pay that members could receive for piecework because Court found no "impairment of statutory labor policy"); *NLRB v. Boeing*, 412 U.S. at 74-75 (upholding position that Board lacked power to review reasonableness of union disciplinary rule imposed on members

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union to decide for themselves the future of their union must be resolved in favor of the union membership. It is the union member who is most affected by union affiliation. In contrast, the effect of affiliation on the unit member who has elected not to join the labor organization which represents him is indirect.

Amoco IV, 262 N.L.R.B. at 1242. The dissent also aptly points out that non-union members interested in an affiliation decision are free to join the union. *Id.*

who crossed picket line). Thus, the Court will not allow the Board to interfere with a union rule unless the rule significantly impinges on a policy of the NLRA.

Congress' concern for insulating internal union affairs from unnecessary interference is also found in the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act), 29 U.S.C. §§ 401-531 (1982). The entire focus of the Landrum-Griffin Act is on internal union affairs, with the object of preventing abuses of power as well as racketeering in union management. *See* 29 U.S.C. § 401.[11] In *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982), the Supreme Court explained:

> Additional evidence that Congress regarded the union's desire to maintain control over its own affairs as legitimate is provided by the history of other sections of the [Landrum-Griffin Act]. In drafting Titles II through VI, Congress was guided by the general principle that unions should be left free to "operate their own affairs, as far as possible." S. Rep. No. 1684, 85th Cong., 2d Sess. 4-5 (1958). It believed that only essential standards should be imposed by legislation, and that in establishing those standards, great care should be taken not to undermine union self-government. . . . Congress' desire to permit unions to regulate their own affairs and to minimize governmental intervention suggests that it would have endorsed union efforts to reduce outsider influence.

457 U.S. at 117 (some citations omitted). In *Sadlowski*, the Court upheld a challenged union rule that prohibited non-union members and non-employees from contributing

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[11] See *Silkwood v. Kerr-McGee Corp.*, —— U.S. ——, 104 S. Ct. 615, 622-26 (1984) and *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483, 489-95 (9th Cir. 1984), for examples of the examination of the legislative history of one act to ascertain congressional intent in another act in the same statutory scheme.

to union election campaigns because the rule served "a legitimate purpose that is clearly protected under the statute" even though the rule may have impinged on employee rights to free speech guaranteed by § 101(a)(2) of the Landrum-Griffin Act. 29 U.S.C. § 411(a)(2). *See* 457 U.S. at 115.

At a minimum, these cases demonstrate that the policy of non-interference in internal union affairs occupies an important position in the scheme of our national labor laws. Bearing this in mind, we must find that the Board's new rule is inconsistent with the NLRA because the rule interferes in an internal union decision without sufficient justification. Like the union rules in the cases discussed above in which the Court barred Board interference, the affiliation decision process is an internal union matter. And, like the Court in those cases, we find that the union practice—limiting affiliation decisions to union members—does not impair a statutory labor policy.

The new rule, on the other hand, will result in interference in internal union affairs by non-members, employers (through refusals to bargain), and the Board. The new rule mandates that a continuity determination may not be conducted until after a unit-wide vote is taken. *See Amoco IV*, 262 N.L.R.B. at 1241 n.7. This puts the cart before the horse. Only *after* the Board conducts a continuity determination and finds a "question concerning representation" can the Board justify its intervention.[12] Under the new rule, by requiring a unit-wide vote even when continuity exists between a pre- and post-affiliation union, the Board inevitably interferes in internal union affairs without justification. In those cases, no "impairment of a statutory labor policy" (here the

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[12] We are not called upon to decide which changes resulting from an affiliation justify the Board in finding a "question concerning representation." Such factual decisions must be reviewed for substantial evidence on a case-by-case basis. *Retail Store Employees Local 428*, 528 F.2d at 1227.

protection of employees' § 7 and § 9(a) rights) can justify the Board's intervention. *See Scofield v. NLRB*, 394 U.S. at 432.

2. *The New Rule is Inconsistent with the Policy of Promoting Stability in the Bargaining Representative*

The Board's new rule is also inconsistent with the strong national policy of maintaining stability in the bargaining representative to achieve the NLRA's primary purpose—preserving industrial peace. 29 U.S.C. § 151 (1982). *See NLRB v. Silver Spur Casino*, 623 F.2d 571, 578 (9th Cir. 1980), *cert. denied*, 451 U.S. 906 (1981). In *Silver Spur* we explained:

> The most valued objective of the Act is industrial peace. . . . [T]he Board [has determined] that industrial peace is more likely to be achieved by maintaining continuity in the bargaining structure. . . . [T]he Board has favored continuity in the bargaining structure over the enhancement of employee free choice.

Id.

The policy of preserving stability in the bargaining structure even at some expense to employee free choice is manifested throughout the intricate web of rules the Board has constructed through years of overseeing national labor relations. To take just three examples, this policy is reflected in (1) employer refusal-to-bargain cases, (2) § 9(c)'s decertification procedures, and (3) the contract-bar rule.

First, in employer refusal-to-bargain cases, unions are accorded several presumptions of majority status. After initial certification by the Board, a union enjoys an irrebuttable presumption of majority status for one year, and a rebuttable presumption thereafter, even in the absence of a contract. *Brooks v. NLRB*, 348 U.S. 96

(1954); *Pioneer Inn Associates v. NLRB*, 578 F.2d 835, 838 (9th Cir. 1978); *NLRB v. Top Manufacturing Co.*, 594 F.2d 223, 224 (9th Cir. 1979). To rebut the presumption, an employer must demonstrate a good faith belief that a certified union lacks majority status. *See Silver Spur*, 623 F.2d at 578-79; *Pioneer Inn*, 578 F.2d at 839-41; *see also NLRB v. Tahoe Nugget, Inc.*, 584 F.2d 293, 301-02 (9th Cir. 1978) ("[T]he threat to industrial peace must be counter-balanced by good cause."). This is not an easy showing for an employer to make. *See* 1 C. Morris, *The Developing Labor Law* 540-49 (2d ed. 1983). The presumptions restrict the opportunities to challenge a certified bargaining representative's majority status.

Second, under its decertification procedures, the Board will consider decertification only if a sizable percentage—30%—of the employees present a petition, 29 C.F.R. § 101.18, or in "extreme cases," R. Gorman, *Labor Law—Basic Text* 49-50 (1976) ("extreme cases" occur when a union has been discriminating on the basis of race or any other impermissible basis). Decertification requires a strong showing of employee dissatisfaction or other "extreme" justification. In this case, the Board's new rule effectively decertifies the newly-affiliated union before any inquiry is conducted into the character of the union or its support among employees. This result runs completely counter to the policy of promoting stability in the bargaining representative.

Third, under the contract-bar rule,

> the Board refuses to conduct decertification elections —whether requested by the employer, employees, or another union—during the life of the contract. *Hexton Furniture Co.*, 111 NLRB 342, 344 (1955). The rule was adopted to protect the bargaining atmosphere, *id.*, and is applied *even if a majority of the employees withdraw their support.*

Pioneer Inn, 578 F.2d at 838 (emphasis added). To "protect the bargaining atmosphere," the contract-bar rule limits the occasions when the Board will consider challenges to a certified bargaining representative's majority status. The Board here, as was true of the employer in *Pioneer Inn*, "does not seek a decertification election, [the Board] seeks the same result by professing a doubt of majority status" without complying with the strict requirements for decertification. *Id.*

The Board's new approach seriously undermines the stability objectives protected by the contract-bar rule. For example, in the *Amoco* cases, the employer unilaterally cancelled the current contract when notified that the bargaining representative had affiliated with another union despite the fact that the contract did not expire for another 17 months. *See Amoco Production Co. v. NLRB*, 613 F.2d at 109. The employer argued that it need not recognize the contract nor bargain with the newly-affiliated union until a new unit-wide representation election was held. Although the Board has repeatedly and properly found such conduct to violate the NLRA, *see Amoco Production Co.*, 220 N.L.R.B. 861, 865 (1975); 233 N.L.R.B. 158, 161-62 (1977); and 239 N.L.R.B. 1195 (1979) (*Amoco III*), this unlawful conduct is condoned under the Board's new rule. *Amoco IV*, 262 N.L.R.B. 1240 (1982).

These rules illustrate that the Board cannot interfere with the certified bargaining representative's status without just cause. Congress and the Board have determined as a matter of national labor policy that bargaining stability and the principle of majority rule may limit the timing of employee challenges to their certified bargaining representative's majority status. Because it effectively decertifies a union before the Board can establish any basis for a union's loss of majority status, the new rule is inconsistent with this national labor policy.

3. *In Light of Effective Longstanding Procedures, it is Irrational to Adopt the New Rule.*

The Board's rule is irrational for at least two reasons.[13] First, the rule is unnecessary to protect legitimate employee interests because the existing due process and continuity procedures adequately protect those interests. Second, the Board's reasoning does not support the rule.

(a) *Existing procedures adequately protect employee interests and are consistent with federal labor policy.*

The Board's previously-followed due process and continuity determination procedures adequately protected the critical rights of employees to be represented by a union selected by a majority of employees in the unit while also protecting union members' rights to run their internal affairs free from unnecessary outside intervention. The procedure allowed the Board to require a post-affiliation representation election on a case-by-case basis if a "question concerning representation" arose. Where no question arose because the affiliation resulted in an insubstantial change in the certified bargaining representative, the Board recognized the change as a purely internal union matter and amended the certification of the newly-affiliated union without a unit-wide election. It is irrational to discard an effective procedure that neither (1) unnecessarily interferes in internal union affairs, (2) unnecessarily destabilizes the bargaining representative, nor (3) unnecessarily discourages the legitimate decision of independent

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[13] For additional criticism along these lines, see Hale, *Union Affiliations: Examination of the Governing NLRA Standards*, 3 Det. C.L. Rev. 709, 732-37 (1983). Hale argues convincingly that the Board's rule is not based on any statutory authority and that it will lead to temporary denials of representation in some cases where a majority of all unit employees unquestionably desire affiliation.

unions to affiliate, in favor of a new procedure that presents all of those risks.

Moreover, we have previously recognized that the existence of adequate safeguards to protect employees' § 7 and § 9(a) rights obviates the need for alternate protective actions. For example, in *Silver Spur*, the employer refused to bargain with the certified bargaining representative and claimed that the union no longer enjoyed majority status. In rejecting the employer's claim that the refusal to bargain was in the interest of protecting employees' § 7 and § 9(a) rights, we noted that if a majority of employees in a bargaining unit no longer supported the union, they could seek the union's decertification. 623 F.2d at 578.[14] Here, the Board's continuity determination protects employees § 7 and § 9(a) rights, and the employees' right to petition for decertification remains an additional and viable option for employees genuinely disgruntled by a union's affiliation decision.

(b) *The Board's Opinion Does Not Justify its Rule.*

The Board's opinion asserts that the new rule is needed to preserve "fundamental due process rights" for all employees. 265 N.L.R.B. No. 55, slip op. at p. 3. We must assume that the Board also bases its changed rule on a concern for employees' § 7 and § 9(a) rights. The Board's reasoning is flawed on both of these grounds; we have already demonstrated the error in the Board's reliance on the latter ground.

The Board's opinion specifically casts the new rule as a modification of the Board's traditional "due process" inquiry.[15] This approach is unpersuasive. The "due proc-

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[14] *See supra* pp. 7-8.

[15] *See supra* pp. 8-9 and note 6. The union contends that there is no rational basis at all for any "due process" inquiry by the Board. We disagree. With regard to the "due process" inquiry,

ess" inquiry has always been aimed at assuring that democratic voting *procedures* are observed in affiliation elections to protect union members' rights to manage their internal affairs and to be represented by the organization of their choice. *See NLRB v. Newspapers, Inc.*, 515 F.2d 334, 339 (5th Cir. 1975) ("principle question is whether in fact the election represents the majority view of the members of the union"). For example, the Board has required the use of secret ballots to avoid any possibility of coercion. By placing the new rule in the context of the "due process" inquiry, the Board avoids considering its legitimate and appropriate inquiry: does the affiliation decision harm non-members' § 7 and § 9(a) interests?

As a practical matter, applying the new rule at the "due process" inquiry stage of the Board's certification amendment procedure makes little sense. The Board's new rule makes the required unit-wide vote a prerequisite for the Board's conducting a continuity determination. The new rule's insertion of a unit-wide vote at this stage of the affiliation process results in duplicative procedures. Under the Board's new rule, a union would first put the affiliation question to a unit-wide vote of union and non-union employees. If the unit voted affirmatively, the union members could then vote to affiliate. Once the union voted to affiliate and asked the Board to amend the union's certification, the Board would still step in and conduct a continuity determination. Despite the fact that a majority of the unit, union and non-union employees combined, had already voted affirmatively on the affiliation question, the Board would nonethless call a formal unit-wide representation election if the Board found that the post-affiliation union was substantially different from the pre-affiliation union. Despite the Board's protestation at oral argument that the two unit-wide votes would differ in their formality, we believe that the process is unreasonably duplicative.

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we hold only that the unit-wide vote is not an appropriate part of that inquiry.

The Board also states that a pre-affiliation unit-wide vote is essential to maintain the integrity of the Board's certification and election procedures. This assertion is also unpersuasive. Its earlier continuity determination process allowed the Board to call for a Board-supervised election whenever the Board found a "question concerning representation." The Board's new rule merely requires an informal, non-Board-supervised election in pre-affiliation decisions. We fail to see how imposing a non-Board-supervised election, even when no representation question arises, enhances the integrity of the Board's certification and election procedures.[16]

CONCLUSION

The Board's new rule is inconsistent with federal labor policy because it unnecessarily interferes with internal union affairs and bargaining structure stability. Such interference is irrational because the Board's prior case-by-case approach adequately protects employees' § 7 and § 9(a) rights without such interference. The Board's new rule is therefore neither consistent with the NLRA's purposes nor rational.

Accordingly, we GRANT the union's petition for review and REMAND the matter to the Board for further proceedings consistent with this opinion.

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[16] The Board, in its brief, also seeks to support its decision by arguing that the union in this case was substantially changed by its affiliation. The Board appears to be supporting its new rule, at least in part, by arguing that continuity might not be found in this case anyway. As the U.S. Chamber of Commerce's amicus brief cogently explains, however, the Board's opinion involves no factual analysis and treats the issue exclusively as a matter of law. We must therefore review the decision as a matter of law. *See supra* note 4.

In any event, the facts of this case could not justify the Board's new rule because the rule would also apply to situations in which 90% of the unit employees are union members and all of them vote for affiliation.

WRIGHT, Circuit Judge, dissenting:

The National Labor Relations Board has decided that a union affiliation election does not satisfy the requirements of due process if nonmembers are ineligible to vote. *Amoco Production Co.*, 262 N.L.R.B. 1240 (1982). I do not find that position irrational or inconsistent with the National Labor Relations Act, 29 U.S.C. §§ 151-169, and would affirm. *See Beth Israel Hospital v. NLRB*, 437 U.S. 483, 501 (1978).

The Fifth Circuit has enforced the Board's rule. *Local No. 4-14, Oil, Chemical & Atomic Workers International Union v. NLRB*, 721 F.2d 150 (5th Cir. 1983). It identifies "the crux of the Board's reasoning":

> "If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted that employees in a bargaining unit cannot be compelled to vote, they can, at the very least, be afforded *the opportunity to vote.* It appears basic to the collective-bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection."

Id. at 152 n.2 (quoting *Amoco Production*, 262 N.L.R.B. at 1241 (quoting *North Electric Co.*, 165 N.L.R.B. 942, 944 (1967) (dissent))).

The Fifth Circuit noted that "[s]trong arguments" for the contrary rule "were adopted by the Board in its earlier rulings that were overruled" by the new ruling. *Id.* at 152. It concluded that "Although the Board earlier

vacilated [sic] somewhat in establishing a rule . . ., [it] clearly articulated reasonable grounds for this later change." *Id.*

The court stated:

> [W] are unable to say that the general ruling that now requires the participation of nonunion members in an affiliation election is irrational or inconsistent with the Act, or that it is beyond the wide discretion of the Board to establish procedures in an affiliation election that will ensure the fair and free choice of the bargaining representative of all the employees.

Local Union No. 4-14, 721 F.2d at 152-53. I agree. That one circuit already has concluded that the Board's position is rational reinforces my position. An intercircuit conflict over the rationality of the Board's decision is unwarranted.

The majority explains at length its reasons for reaching the opposite conclusion. It engages in the balancing of interests that is the province of the Board, not the courts.

First, does the new rule unnecessarily interfere with internal union affairs? The Board has concluded that an affiliation election is not an internal union affair, but involves the selection of a bargaining representative. *Amoco Production*, 262 N.L.R.B. at 1241. While the Board has presumed in the past that an affiliation election was an internal union affair unless a question concerning continuity of representation arose, it may change its application of the Act "in light of its cumulative experience." *Beth Israel Hospital*, 437 U.S. at 508.

The Board has concluded that affiliation election voting rights for nonmembers are necessary to preserve their right to participate in the selection of a bargaining representative. *See* 29 U.S.C. § 157. The bargaining unit here consists of about 4800 employees, of which 2824 are union

members. Only 1206 member employees voted for affiliation; 774 voted against it.

The majority opinion concludes that requiring participation of nonmembers constitutes an unwarranted interference with internal union affairs. While the majority may give preservation of union autonomy higher priority, we are required to defer to the Board's expertise. *See NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 405 (1962); *Texaco, Inc. v. NLRB*, 700 F.2d 1039, 1042-43 (5th Cir. 1983). The Board need only justify its position within the statutory framework. *Beth Israel Hospital*, 437 U.S. at 501; *Local Union No. 4-14*, 721 F.2d at 152.

Second, is the Board's rule inconsistent with the promotion of stability in the bargaining representative? The majority opinion states that this is a situation in which the promotion of stability of the bargaining representative should prevail over individual employees' rights to free choice. A change in affiliation is a change in the status of the bargaining representative. Under the new rule, nonmembers may not force affiliation because the decision to hold an affiliation election remains the province of the union. The Board's rule will promote stability more effectively than did its former position.

Third, is the Board's new rule irrational? The majority contends that irrationality is established by the adequacy of the old procedure and the inadequacy of the Board's reasoning.

The adequacy of the old procedure is irrelevant. We should instead determine whether the new rule is rational and consistent with the Act. The merit or sufficiency of the previous rule should not control.

The majority lists risks that it considers created unnecessarily by the change in procedure. I would defer to the Board's conclusions as to the necessity of the new rule.

Those risks each identify a policy, the protection of which is discussed elsewhere in this opinion.

The Board has not avoided the appropriate statutory inquiry. It has decided that the right of nonmembers to select their bargaining representative will be protected adequately only if they may participate in affiliation decisions. Therefore, due process fairness and the integrity of the certification process require the right to participate in affiliation elections.

I would affirm.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 82-7736

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

[Filed Dec. 26, 1984]

ORDER DENYING PETITION FOR REHEARING AND REJECTION [sic] SUGGESTION FOR REHEARING EN BANC

Before: WRIGHT, PREGERSON, and FERGUSON, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion and no judge of the court has requested a vote on it. Hon. Robert R. Beezer did not participate in the consideration of this matter.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

KENNEDY, Circuit Judge, with whom SNEED, ANDERSON, and HALL, Circuit Judges, join, dissenting from denial of rehearing en banc:

I dissent from the court's failure to hear this case en banc and to consider the conflict we create with the Fifth Circuit on an important issue of labor law. *See Local Union No. 4-14 v. NLRB*, 721 F.2d 150 (5th Cir. 1983).

Quite apart from the labor law question presented, the panel opinion is disturbing for a misapplication of a fundamental legal category, the concept of reason. Since the writings of Cicero, if not before, it has been recognized that the fair application of law to a particular dispute, as well as the underlying theory of justice in a more universal sense, depends on reason. Cicero, *De Legibus* Book II (C.W. Keyes trans. 1977). Reason is a juridical concept essential for the constancy of our decisions, and we undermine it if we use the term "irrational" to express disagreement with a proposition supported by articulated premises within the boundaries of tenable argument.

We must uphold a Board rule unless it lacks rationality or is inconsistent with the statute. *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 501 (1978); *NLRB v. Nevis Industries, Inc.*, 647 F.2d 905, 909 (9th Cir. 1981). It is no accident that rationality is the standard used to scan the authority of the Board to adopt its rules. The deferential standard of review is a recognition of the Board's central function in the legal process. The Board faces difficult choices and may make close, even debatable, decisions regarding the implementation of national labor policy. Its rulemaking power is an ongoing process in which the Board is free to change its position, guided by the experience it has gained in the administration of the Act. *Beth Israel Hospital*, 437 U.S. at 508.

Here the Board was required to implement the basic policy of free choice for all employees in the selection of

a bargaining representative, as provided by sections 7 and 9(a) of the National Labor Relations Act. 29 U.S.C. §§ 157, 159(a) (1982). The Board saw the question to be not whether the union could change its affiliation, but whether it could change its affiliation *and* remain the bargaining agent of all the employees in the unit. It concluded that all affected employees, not merely union members, must be permitted a vote on the proposed change. The argument the union makes that this is a matter of internal union concern is respectable, but its rejection was not irrational. Neither the Board in announcing the rule nor the Fifth Circuit in sustaining it acted outside the bounds of reason.

Upon these considerations and those further expressed by Judge Wright in his dissenting opinion, I dissent from the failure of the court to hear the case en banc.

NORRIS, Circuit Judge, with whom POOLE and HALL, Circuit Judges, join, dissenting from denial of rehearing en banc:

I also dissent from the court's failure to take this case en banc. I simply cannot accept the panel's judgment that the NLRB rule at issue represents "an unreasonable or unprincipled construction of the statute . . . ." *Ford Motor Co. v. NLRB*, 441 U.S. 488, 497 (1978). Given the wide latitude we must accord the NLRB's exercise of its rulemaking authority, I agree with the Fifth Circuit that the rule falls within the bounds of NLRB discretion. *Local Union No. 4-14 v. N.L.R.B.*, 721 F.2d 150 (5th Cir. 1983). In my view, en banc review is justified because the panel decision creates an unnecessary conflict in the circuits.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 82-7736

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA,
LOCAL NO. 1182, etc.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

[Filed Jan. 2, 1985]

ORDER

Before: WRIGHT, PREGERSON and FERGUSON, Circuit Judges.

The order filed December 26, 1984 is amended. The second paragraph should read: The full court has been advised of the en banc suggestion and an active judge requested a vote on it. The request having failed to receive a majority of the votes of the active judges, the petition for hearing is denied and the suggestion for rehearing en banc is rejected.

The last sentence on the December 26 order is deleted.

265 NLRB No. 55

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases 19-CA-11364 and 19-AC-23

SEATTLE-FIRST NATIONAL BANK

and

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO

SUPPLEMENTAL DECISION AND ORDER

On September 28, 1979, the National Labor Relations Board issued its Decision and Order in Case 19-CA-11364 [1] finding that the Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to recognize and bargain with Financial Institution Employees of America, Local No. 1182, after it had affiliated with United Food and Commercial Workers International Union, AFL-CIO,[2] and changed its name from Firstbank Independent Employees

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[1] 245 NLRB 700.

[2] Initially, the Local affiliated with Retail Clerks International Union, AFL-CIO. Thereafter, the International merged with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, creating the United Food and Commercial Workers. In Case 19-CA-11364 the Board amended the name of the Charging Party. 245 NLRB 700 at fn. 1.

Association (herein FIEA) to Financial Institution Employees of America, Local No. 1182.[3] The Respondent was ordered to recognize and bargain with the newly affiliated Union. On June 27, 1980, the United States Court of Appeals for the Ninth Circuit granted the Board's motion to withdraw the record on review, and the parties were notified on October 30, 1980, that the Board had decided, *sua sponte*, to reconsider its decision and that statements of position could be submitted. The Board received timely statements of position from the Charging Party and the Respondent.

The Board has reconsidered its decision in light of the entire record and the statements of position and, for the reasons set forth herein, has decided to dismiss the complaint in Case 19-CA-11364 in its entirety, and to dismiss the petition and revoke the amended certification in Case 19-AC-23.

The facts have been fully set forth in the Board's decision and Amendment of Certification, 241 NLRB 751. Briefly summarized they are as follows: FIEA was certified by the Board on November 30, 1970. The parties entered into their initial collective-bargaining agreement in 1971. The most recent collective-bargaining agreement was terminated by the Respondent in 1977.

In 1977 the executive council of FIEA unanimously agreed to seek affiliation with the Retail Clerks. Meetings were held, which were open to all unit members, throughout the State of Washington. At these meetings the affiliation was discussed among with voter eligibility requirements. Eligible to vote were current FIEA members and

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[3] As a result of its affiliation FIEA petitioned the Board to amend its certification. The petition was granted and an Amendment of Certification was issued at 241 NLRB 751 (1979). Thereafter, the Respondent refused to recognize and bargain with the affiliated Union. Accordingly, because of the relationship between Case 19-CA-11364 and Case 19-AC-23 the Board has decided, *sua sponte*, to consolidate them.

those who joined by January 19, 1978. In addition to the meetings, letters were sent to all unit members explaining, *inter alia*, the eligibility requirements. Thereafter, the Washington State Public Employment Relations Commission conducted a secret-ballot election. Ballots were mailed to 2,624 union members; there was approximately 4,800 employees in the unit. Of the union members, 1,206 voted for affiliation and 774 against. On April 1, 1978, FIEA was granted a charter by the Retail Clerks.

The Respondent argues, *inter alia*, that the affiliation election is invalid because only members of FIEA were permitted to vote. In accordance with our recent decision in *Amoco Production Company*,[4] this contention is correct. The issue in *Amoco*, as here, was the validity of a "members only" affiliation vote. The Board held that an affiliation vote in which nonmembers are not permitted to vote violates fundamental due-process standards.

In this case nonmembers were not permitted to vote in the affiliation election. Accordingly, the election did not meet minimal due-process standards and the affiliation was improper. The Respondent, therefore, did not violate Section 8(a)(5) of the Act when it refused to bargain with Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO.

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[4] 262 NLRB No. 160 (1982) (Members Fanning and Zimmerman dissenting).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that its Decision and Order in Case 19-CA-11364 (245 NLRB 700) be vacated and the complaint be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the Board's Decision and Amendment of Certification issued in Case 19-AC-23 (241 NLRB 751) be, and it hereby is, vacated.

IT IS FURTHER ORDERED that the petition in Case 19-AC-23 be, and it hereby is, dismissed.

Dated, Washington, D.C., November 18, 1982

JOHN R. VAN DE WATER, Chairman

HOWARD JENKINS, JR., Member

ROBERT P. HUNTER, Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

MEMBERS FANNING and ZIMMERMAN, dissenting:

An affiliation election is nothing more than an internal union matter upon which the Board generally will not intrude. For this reason, and as more fully set forth in our dissenting opinion in *Amoco Production Company*,[5] we would find that the affiliation election conducted herein fully met adequate due-process requirements and reaffirm the original decisions.

Accordingly, we dissent.

Dated, Washington, D.C., November 18, 1982

JOHN H. FANNING, Member

DON A. ZIMMERMAN, Member

NATIONAL LABOR RELATIONS BOARD

[5] 262 NLRB No. 160, sl. op., p. 9 (1982).

265 NLRB No. 55

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases 19-CA-11364 and 19-AC-23

SEATTLE-FIRST NATIONAL BANK

and

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO

CORRECTION

On November 18, 1982, the National Labor Relations Board issued a Supplemental Decision and Order in the above-entitled proceeding in which an inadvertent error appears on page 2. Please change the last word in body of text from "among" to "along."

245 NLRB No. 88

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 19-CA-11364

SEATTLE-FIRST NATIONAL BANK *and* FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO.[1]

September 28, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS MURPHY AND TRUESDALE

Upon a charge filed on May 8, 1979, by Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO, herein called the Union, and duly served on Seattle-First National Bank, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 19, issued a complaint and notice of hearing on May 21, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National

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[1] The General Counsel moved to amend the name of the Charging Party. Financial Institution Employees of America, Local No. 1182,

Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on April 5, 1979, following a hearing in Case 19-AC-23, the Board issued its Decision and Amendment of Certification (241 NLRB 751), amending the certification in Cases 19-RM-816 and 19-RC-5301 by substituting "Financial Institution Employees of America, Local No. 1182, chartered by Retail Clerks International Union, AFL-CIO," for "Firstbank Independent Employees Association," herein called FIEA, as the certified bargaining representative of the employees of Respondent in the unit found appropriate in Cases 19-RM-816 and 19-RC-5301,[2] and that commencing on or about April 5, 1979, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 31, 1979, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. It also filed an application for *subpoena duces tecum*. The Union filed a response to that application.

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chartered by Retail Clerks International Union, AFL-CIO, to reflect the current name of the International Union. We hereby grant that motion.

[2] Official notice is taken of the records in the representation and amendment of certification proceedings, Cases 19-RM-816, 19-RC-5301, and 19-AC-23, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1976), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); and Sec. 9(d) of the NLRA, as amended.

Thereafter, the Union filed a motion for an appropriate remedy, and Respondent filed a response.

On June 12, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 19, 1979, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answers to the notice and the complaint, Respondent, in effect, is attempting to relitigate the issues raised in the amendment of certification proceeding. However, Respondent also argues that it has new evidence showing, *inter alia*, that officers of FIEA have been replaced, that statements made by the Union before the affiliation vote have proved unfounded or inaccurate, and that it has possession of numerous petitions from employees indicating that they disagree with the way the affiliation vote was conducted. Respondent, therefore, contends that if the complaint is not dismissed, it should be granted a hearing.[3] We reject this contention. In *Amoco*,

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[3] Respondent also argues that the Board Decision in *Amoco Production Company*, 239 NLRB 1195 (1978) (Member Truesdale concurring, Members Jenkins and Penello dissenting separately), should not be applied retroactively. However, Respondent has failed to demonstrate how the application of *Amoco, supra*, would be an unjust burden on Respondent.

supra, the Board held that a union affiliation proceeding was essentially an internal union matter in which the Board will generally not involve itself. Under *Amoco* the alleged new evidence, even if adduced and credited, would have no effect on the validity of the affiliation vote. We therefore find that Respondent has not raised any issues which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.[4]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a banking association with an office and place of business in Seattle, Washington, where it is engaged in commercial banking and services. During the past 12 months, a representative period, Respondent has provided services valued in excess of $50,000 directly to customers outside the State of Washington.

We find, on the basis of the foregoing, that Respondent is and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Financial Institution Employees of America Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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[4] The Union's motion for attorneys' fees and other expenses, however, is hereby denied because we cannot conclude that Respondent's defense was "patently frivolous." *Heck's Inc.*, 215 NLRB 765 (1964).

III. THE UNFAIR LABOR PRACTICE

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees employed by Respondent in the State of Washington, excluding officers, management trainees, professional employees, confidential employees, and supervisors and guards as defined in the Act.

2. The certification

On April 5, 1979, the Board amended the certification in Case 19-AC-23 to substitute the Union for FIEA as the bargaining representative of the employees in said unit for the purpose of collective bargaining with Respondent. Since April 5, 1979, the Union has been and continues to be the exclusive representative of the employees in said unit within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about April 5, 1979, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 5, 1979, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 5, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative

of the employees in the appropriate unit and that, by such refusal, Rspondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Seattle-First National Bank, State of Washington, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by Respondent in the State of Washington, excluding officers, management trainees, professional employees, confidential employees, and supervisors and guards as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 30, 1970, the above-named labor organization as amended on April 5, 1979, has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 5, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Seattle-First National Bank, Seattle, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, and other terms and conditions of employment with Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees employed by Respondent in the State of Washington, excluding officers, management trainees, professional employees, confidential employees, and supervisors and guards as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its various locations where bargaining unit employees are employed copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms

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[5] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading

provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

"Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United State Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the abovenamed Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All employees employed by the Employer in the State of Washington, excluding officers, management trainees, professional employees, confidential employees, and supervisors and guards as defined in the Act.

SEATTLE-FIRST NATIONAL BANK

241 NLRB No. 116

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 19-AC-23

SEATTLE-FIRST NATIONAL BANK *and* FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY RETAIL CLERKS INTERNATIONAL UNION, AFL-CIO,
Petitioner.

April 5, 1979

DECISION AND AMENDMENT OF CERTIFICATION

BY CHAIRMAN FANNING AND MEMBERS MURPHY AND TRUESDALE

On November 30, 1970, the Board, in Cases 19-RM-816 and 19-RC-5301, certified the Firstbank Independent Employees Association (herein FIEA or Petitioner) as the collective-bargaining representative in an appropriate unit of all the Employer's employees within the State of Washington, excluding professional employees, confidential employees, management trainees, and supervisors and guards as defined in the Act. On June 19, 1978, the Petitioner filed this petition to amend the certification to change the name of the certified bargaining agent from "Firstbank Independent Employees Association" to "Financial Institution Employees of America, Local 1182, chartered by Retail Clerks International Union, AFL-CIO."

A hearing was held on the petition on July 26 and 27, 1978, before Hearing Officer Lynne C. Litwiller at Seattle,

Washington. All parties appeared at the hearing and were given full opportunity to participate therein. After the hearing, the Petitioner and the Employer filed briefs with the Regional Director. Thereafter, the Regional Director transferred the case to the Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The rulings of the Hearing Officer are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:[1]

FIEA has had a collective-bargaining agreement with the Employer since 1971. The current collective-bargaining agreement was terminated by the Employer on October 30, 1977.

During 1977, the executive council of FIEA authorized its bargaining committee to explore affiliation with other unions. The committee, after contacting several unions, voted unanimously to seek affiliation with the Retail Clerks International Union. The affiliation agreement was unanimously approved by the executive council of FIEA. A notice was mailed to all unit representatives (the equivalent of shop stewards) informing them of meetings to

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[1] The Petitioner filed a brief, differing slightly from that filed with the Regional Director, with the Board. The Employer has moved to strike this brief as not being in compliance with Sec. 102.67(i) of the Board's Rules and Regulations, Series 8, as amended. We agree and grant the Employer's motion to strike. The Petitioner has moved to consolidate this case with Cases 19-CA-9835 and 19-CA-9916, also issued this day at 241 NLRB No. 117. The Employer filed a memorandum in opposition. We find that the cases are not similar enough in law or fact to warrant consolidation, and the Petitioner's motion is hereby denied. The Employer has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

be held throughout the State on January 6, 7, and 8, 1978.[2] At these meetings the unit representatives were informed of the terms of affiliation, the election procedure, and the standards for voter elegibility. In order to vote an individual had to be either a current member of FIEA or join by January 19 and pay 1 month's dues of $4. The unit representatives were instructed to contact all unit employees and inform them of the pending affiliation vote and specifically to contact nonmembers and explain to them the eligibility standards. Concurrently a letter was sent to all unit employees informing them of the pending election and the eligibility requirements. After this initial meeting other meetings were held at all work locations. These meetings were attended by officials of both FIEA and the Retail Clerks International Union and were open to all unit employees. On or about January 17 another letter was sent to all unit employees reiterating the eligibility standards.

On January 20 a notice was sent to all FIEA members informing them that a affiliation secret-ballot election would be conducted by the Washington State Public Employment Relations Commission (PERC). The ballots were to be mailed by February 5 and had to be back to PERC by February 21. The notice stated the ballot question and contained additional information regarding the locations of meetings being held throughout the State on February 4 and 5. These meetings were again attended by representatives of both Unions who spoke about the affiliation and answered questions. Two other informational letters were sent to FIEA members before the meetings.

PERC mailed the ballots on February 4 to 2,624 members; there were approximately 4,800 employees in the unit. The results were 1,206 votes for affiliation and 774 against. FIEA applied for, and on April 1 was granted, a charter by the Retail Clerks International Union.

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[2] Hereinafter all dates are in 1978.

The Employer attacks the affiliation on the grounds that: (1) the substitution of the Petitioner for FIEA is a substantial change in the bargaining representative and thus raises a "question concerning representation" requiring a Board-conducted election; (2) only members of FIEA were allowed to vote; and (3) FIEA did not follow its own constitution in establishing voter elegibility standards.

This case is controlled by our recent second Supplemental Decision and Order in *Amoco Production Company*.[3] Regarding the Employer's first argument, as we said in *Amoco (Id.)*

> [a]n affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. The organizations participating in the affiliation determine whether any administrative or organizational changes are necessary in the affiliating organization.[4]

---

[4] [O]nly union members will be affected by any change in the constitution and internal union rules and regulations, as they have voluntarily agreed to do by virtue of the majority within their ranks having chosen to affiliate.

Similarly, the Employer's second argument is also lacking in merit.

> Since we view an affiliation vote as basically concerned with the organization and structure of the union and not the representational status of employees, it is the sort of internal union matter into which the Board does not ordinarily intrude. The Board determines whether the vote was conducted with adequate due process: including, for example, proper notice to all members, an orderly vote, and some rea-

---

[3] 239 NLRB 1195 (1979). Member Truesdale concurring. Members Jenkins and Penello dissenting separately.

sonable precautions to maintain the secrecy of the ballot.[4]

The Employer is not contending that there was any irregularity or impropriety in PERC's administration of the election, and it is readily apparent from the facts that "[a]dequate notice, discussion and time for reflection were provided all members before the election." [5]

The Employer argues that the election was deficient because the voter eligibility requirements were not in accordance with the FIEA constitutional requirement that only members in good standing as of the last day of the month preceding the notice of election shall be allowed to vote (here December 30). But FIEA permitted members to vote who were on the last dues-checkoff list submitted by the Employer for October 1977 as well as employees joining as late as January 19.

The Petitioner contends that its actions were reasonable in the circumstances. The Pettioner alleges that the Employer put it in this dilemma by terminating dues checkoff. The Petitioner was consequently faced with the difficult, if not impossible, task of determining who, in this sizable unit spread over the State of Washington in approximately 171 locations, was a current dues-paying member. It therefore decided that anyone who joined and paid 1 month's dues before January 19 would be eligible to vote. The Petitioner also argues that its conduct was intended to, and in fact did, enfranchise unit members. Moreover, the Petitioner submits that there is no evidence that FIEA's actions were intended to undermine, or resulted in the undermining of, the electoral process.

We agree with the Petitioner. In the circumstances the broadening of the franchise does not support denial of the petition under our decision in *Amoco, supra.* We

---

[4] *Id.* 3-4.

[5] *Id.*

therefore find that the Employer's arguments are without merit.

In view of the foregoing, we shall amend the certification in Cases 19-RM-816 and 19-RC-5301 to reflect the current name and affiliation of the certified Union. This amendment is not to be considered as a new certification or recertification.

ORDER

It is hereby ordered that the petition to amend the certification filed by the Financial Institution Employees of America, Local 1182, chartered by Retail Clerks International Union, AFL-CIO, be, and it hereby is, granted, and that the decision and Certification of Representative in Cases 19-RM-816 and 19-RC-5301 be amended by substituting "Financial Institution Employees of America, Local 1182, chartered by Retail Clerks International Union, AFL-CIO" for "Firstbank Independent Employees Association."

Nos. 84-1493 & 84-1509

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents,

and

SEATTLE FIRST NATIONAL BANK,
Petitioner,
v.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

MEMORANDUM FOR THE UNION RESPONDENT IN REPLY TO THE PETITIONS FOR A WRIT OF CERTIORARI

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MEMORANDUM FOR THE UNION RESPONDENT IN REPLY TO THE PETITIONS FOR A WRIT OF CERTIORARI

Respondent, Financial Institution Employees of America, Local 1182, does not oppose the petitions for a writ of certiorari to review the decision of the Ninth Circuit in this case.

While we believe that the decision below is entirely sound and should be affirmed by the Court, we agree with petitioners: (a) that the Ninth Circuit's decision is in conflict with the decision of the Fifth Circuit in *Oil Workers Local 4-14 v. NLRB*, 721 F.2d 150 (1983); and (b) that the question posed here—whether the National Labor Relations Act, as amended, grants to employees in a collective bargaining unit who have chosen not to become members of the union that represents that unit the right to participate in a vote as to whether the union will affiliate with another union—is a recurring one of profound importance to the proper administration of the NLRA.

Accordingly, under this Court's criteria for exercising its discretionary review authority, this case does appear worthy of plenary consideration.

Respectfully submitted,

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JUL 10 1985
ALEXANDER L. STEVAS,
CLERK

Nos. 84-1493 and 84-1509

In the Supreme Court of the United States

OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

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FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED MARCH 21, 1985 (NO. 84-1493) AND MARCH 25, 1985 (NO. 84-1509)
CERTIORARI GRANTED MAY 13, 1985

In the Supreme Court of the United States

OCTOBER TERM, 1985

Nos. 84-1493 and 84-1509

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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May 31, 1979—Answer filed (Case No. 19-CA-11364)

June 6, 1979—General Counsel's Motion for Summary Judgment (Case No. 19-CA-11364)

June 19, 1979—Order transferring Case to the Board and Notice to Show Cause (Case No. 19-CA-11364)

June 29, 1979—Response of Respondent Seattle-First National Bank to Notice to Show Cause on Motion for Summary Judgment (Case No. 19-CA-11364)

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March 21, 1985—Petition for Certiorari filed by National Labor Relations Board (No. 84-1493)

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EXCERPTS FROM TRANSCRIPT OF HEARING IN BOARD CASE NO. 19-AC-23

* * * *

[10] WITNESS JERRY ARD

* * * *

Q. (By Mr. Wendel) Ms. Ard, whom are you presently employed by?

A. Local 1182.

Q. And what is your position?

A. I'm President.

Q. Did you at one time work for Seattle-First National Bank?

A. Yes, I did.

* * * *

[11] Q. And did you hold—while you were an employee of the Bank, did you hold any position with the—with First Bank Independent Association?

A. Yes, I did.

Q. And what position was that?

A. I became an executive council member of the F.I.E.A. in April or May of 1973.

Q. Could you explain for us what the Executive Council is?

A. The Executive Council of the Union is composed of a statewide—of three statewide offices and six regional vice presidents, and each region is further broken down depending on the number of members within a region and the total number of council being 33 or 34, depending on the way it was structured at various times, and I was one of those council members, a proportional representative.

Q. And you said you went on leave from the bank at what time?

A. In October of 1974.

Q. What position did you assume with the union at that time?

A. President.

Q. And have you been president since that time?
A. Yes.

* * * *

[13] HEARING OFFICER: The parties, at this time, will take up the issue of the history of bargaining and unit. Ms. Ard will then be subject to recall.

At this point, then, will the parties agree and stipulate that there is a history of collective bargaining among the employees of Seattle-First National Bank as follows: To wit: On November 30, 1970, First Bank Independent Employees Association was certified as the exclusive bargaining representative of the employees of Seattle-First National Bank in a unit described as all employees of Seattle-First National Bank at all of its locations and places of business within the State of Washington excluding professional employees, confidential employees, management trainees and supervisors and guards, as defined in the Act. Subsequent to this certification, the Employer negotiated and executed collective bargaining agreements with the certified union, First Bank Independent Employees Association, the most recent agreement having expired on October 30, 197[7]. No new agreement has yet been negotiated.

On June 19, 1978, the Financial Institution Employees of America, Local 1182, chartered by Retail Clerks International Union, AFL-CIO, filed the petition, the purpose of which was to change the name of the certified labor organization from First Bank Independent Association to the name of [14] the Petitioner.

Does Employer so stipulate?

MR. HUTCHESON: The Employer so stipulates.

HEARING OFFICER: And does the Petitioner so stipulate?

MR. WENDEL: So stipulates.

HEARING OFFICER: That stipulation is received.

Will the parties agree and stipulate that the appropriate unit is as follows: all employees of the Seattle-First National Bank at all of its locations and places of

business within the State of Washington excluding professional employees, confidential employees, management trainees, supervisors, and guards, as defined in the Act.

Do you so stipulate, Mr. Hutcheson?

MR. HUTCHESON: Employer so stipulates.

HEARING OFFICER: Mr. Wendel?

MR. WENDEL: So stipulates.

HEARING OFFICER: That stipulation is received.

* * * *

[15] Q. When was the first collective bargaining agreement negotiated with the Employee organization at First Bank?

A. The first one, to my knowledge, was 1969, January, I believe, of that year.

Q. And what was the name of that Employee organization with whom that contract was negotiated?

A. I believe its name was First Bank Employees Association, the acronym was FBEA.

[16] Q. Was there ever an affiliation vote conducted within that organization to affiliate with another labor organization?

A. Yes, there was.

Q. And approximately when did that vote occur?

A. About May of 1970.

Q. With what organization?

A. The Marine Engineers Benevolent Association.

Q. And who was eligible to vote in that election?

A. Members of the F.B.E.A.

Q. And how many employees in the unit at that time were members of the Association?

O. I believe around a thousand.

Q Do you have any idea what percentage that was?

A. I understood it to be about a third of the employees.

Q. And what was the result of that vote?

A. The affiliation was ratified.

Q. Did the Bank recognize that affiliation?

A. I'm not certain whether they did or not because I do know that members of the representatives of MEBA were present at the bargaining table with the Employer but I don't know if any sessions were actually held after the affiliation or not.

Q. Did another labor organization appear on the scene at that time?

A. Yes.

Q. What organiaztion was that?

[17] A. First Bank Independent Employees Association.

Q. And what occurred at that time?

A. It demanded recognition from the Employer as the bargaining unit representative.

Q. And what position did the Bank take?

A. The Bank went to the Board to determine who was the bargaining representative.

Q. And was there a Board election at that time?

A. Yes, there was.

Q. And what labor organizations participated?

A. First Bank Independent Employees Association, MEBA— and MEBA.

Q. And what were the results of that election?

A. First Bank Independent Employees Association won that election and was certified.

* * * *

[18] Q. * * * Did FIEA negotiate any contracts with the Bank?

A. Yes.

Q. And when were those contracts re-negotiated?

A. When were they negotiated? In 1971, for a term of three years, and one was negotiated in 1974, also for a three-year term.

Q. Sometime after FIEA came into existence, was certified by the Board, was there another affiliation vote that occurred within that unit?

A. Yes, there was.

Q. When did that occur?

O. In August of 1974.

Q. And with what unit was that affiliation vote held?

A. The Office and Professional Employees International [19] Union.

* * * *

[21] Q. Could you tell us what the results were?

A. Yes, over two-thirds of the members cast a ballot in that election. 59% of those voting voted yes.

Q. Did—under the constitution at that time, did the affiliation then take place?

A. No, it required that of those casting ballots, two-thirds must vote yes to be ratified.

Q. And how many did it require had to cast ballots?

A. Two-thirds also.

Q. After that affiliation vote occurred, were there any further discussions within the union about affiliation?

A. Yes, there was.

Q. And can you tell us when those—when and within what body those discusions occurred?

A. The Executive Council, I believe, in its very—the Council meeting in October of '74 began its pianning toward contract negotiations in 1977, and it was—it was felt by the Council that affiliation should be clearly a viable option of the union, and it was—a committee report was received by the council and approved that the constitution be modified on affiliation elections to make passing of the affiliation easier. This was discussed in a number of subsequent council meetings and, in November of 1975, the Council decided on amendment to the constitution and this was discussed [22] in a unit rep seminar, November 1975, and then voted on in December.

Q. Could you explain to us what the unit reps are?

A. Unit representatives are the equivalent of shop stewar[d]s, each work location or in the very large locations, each separate department is entitled to a unit representative.

Q. Was there a constitutional change that occurred in 1975?

A. Yes, there was.

Q. And when did that occur?

A. It was December, was the election.

Q. And what was that change?

A. It was——

Q. Or what were the changes?

A. Well, there was a total of six changes but the secret ballots were required so I'm—the member in good standing clause re-defined and the affiliation ratification percentages were changed to 60% of the members must cast ballots to validate the election, and of those voting, a simple majority would ratify.

* * * *

[25] Q. In 1977, could you tell us what discussions occurred within the executive council about affiliations?

* * * *

[27] A. Yes, it was—what the council discussed and aimed towards was that we might have a rather protracted contract negotiations and possibly need extensive legal assistance and [28] we were not in a financial position to sustain a fight like that, and the Bank had already made some reference to secession of dues check-off, so this was a concern in our minds, so the executive council empowered the bargaining team to begin to constitute itself into a search committee to examine the unions for the possibility of affiliation.

Q. And how many members were on this bargaining committee?

A. There were five regular committee members, myself, and five council members, plus a staff member, Nancy Holland, plus two alternates who were also council members. The total committee was eight people.

Q. Can you explain to us what the committee did at that time?

A. Yes, they drafted up a tentative list of labor unions and did some research on them, and then began talking to some of those on their list.

* * * *

[29] Q. And could you just tell us briefly what those discussions entailed?

A. First of all, they concentrated on the structure of our organization and the union, and we were looking to see that the structure would be compatible and the degree of autonomy, which was a high priority in our list. We described in some detail our bargaining situation and the problems that we anticipated to get a contract, and the anticipated legal costs in that area. And we discussed our financial structure, our dues structure, you know, being not compatible with any international unions.

Q. Did the committee then make a report to the executive council?

A. Yes, they did.

Q. When did they report to the council approximately?

A. I believe that the first report was like—it was in September of '77, the preliminary report.

Q. And the second report?

[30] A. In the council meeting of October, which was more detailed.

Q. And what happened at the October meeting?

A. Council decided it was time for the Bargaining Committe to negotiate the proposed affiliation agreement and make a recommendation to the council, and so the bargaining committee was so empowered.

Q. And what happened after that meeting?

A. The bargaining committee met and went—we went over our list and decided upon the Retail Clerks International Union, and decided to do them—to approach them for a proposed affiliation agreement.

Q. And was there a vote within the committee on that recommendation?

A. Yes, there was.

Q. And what was that vote?

A. Eight votes in favor of it and no opposed.

Q. And did the representatives of FIEA then meet with representatives of the R.C.I.U.A.?

A. Yes.

Q. When did that meeting occur?

A. It was toward the end of November, November 25th or 26th, I believe.

Q. And who was present for FIEA at that meeting?

A. William Wynn, International President; George Murphy, [31] General Counsel for the Retail Clerks, and International Vice Presidents Don Hofer, J. Fulman, and Tom Rouso.

Q. I show you a letter dated December 27th from William Wynn to Jerry Ard.

Does this letter embody the—well, let me rephrase the question.

Was an agreement reached about some of the conditions of the affiliation at that November meeting?

A. Yes.

Q. Does this letter embody the terms of those conditions?

A. Yes.

MR. WENDEL: I'd like to mark this as Petitioner's Exhibit No. 3 and move its admission into Evidence.

[Petitioner's Exhibit 3 received.]

Q. (By Mr. Wendel) How did the terms of the agreement you arrived at with the R.C.I.U. compare with what you had been authorized to negotiate by the executive council?

[32] A. They were within those limitations.

Q. Was this affiliation proposal then presented to the Council?

A. Yes, it was.

Q. And was it discussed within the council?

A. Yes, it was.

Q. Was a vote taken?

A. Yes, there was.

Q. And what was the result of that vote?

A. The council members present unanimously supported the recommendation for the affiliation on those terms.

Q. Were union—were reps—were meetings held thereafter with the unit representatives of the union?

A. Yes, there were.

* * * *

[33] Q. On what dates were those meetings held?

A. January 6th through 8th.

Q. What was discussed at those meetings?

A. We discussed the proposed affiliation and the terms of the affiliation, and we discussed the affiliation election procedures.

Q. Was there any discussions in terms of who was eligible to vote?

A. Yes, there was a lengthy discussion in that area.

Q. And what were the instructions the union representatives [34] were given?

A. They were informed that nonmembers would be allowed to join the union up until January 19th, and be able to vote. They were also further instructed they were to contact all non-members in their work locations and afford them the opportunity to join.

* * * *

[35] Q. (By Mr. Wendel) Ms. Ard, you referred to a letter that was given out to unit representatives at that meeting and also was being mailed to unit employees.

[36] I hand you what has been marked as Petitioner's No. 6 and ask you if that is a copy of that letter?

A. Yes, it is.

Q. Was that also mailed to all unit employees?
A. Yes, it was.

[Petitioner's Exhibit 6 received.]

* * * *

[37] Q. (By Mr. Wendel) Ms. Ard, I'd like to show you what has been marked as Petitioner's No. 8, and ask you if you recognize that?
A. Yes, I do.
Q. What was done with that?
A. It was mailed to all bargaining unit employees.
Q. And is there a reference in there to when non-members would have to join to be eligible to vote?
A. Yes, there is. Yes, it's on the second page.

[Petitioner's Exhibit 8 received.]

* * * *

[45] Q. When was the eligibility for the affiliation vote decided?
A. The end of December 1977.
Q. And how was that decided?
[46] A. We talked about this at our council meeting prior to that time and as to what all the legal questions on eligibility and the exact scheduling of the election and so forth, and that was the council empowered the bargaining committee to actually make those final decisions depending on the legal advice we received. And, accordingly, we made our decision at the end of December, based on that legal advice.
Q. I'm not sure I asked you this but who made the decision on voting eligibility?
A. The bargaining committee.

* * * *

Q. Can you tell us what that standard was?
A. Yes, we—anybody that had been previously on dues check-off was still, you know, considered a member in good standing. Those that joined later had to join and pay their $4.00, or their first month's dues, and we kept that open, their joining period. This is where it

was different than the strike election. We kept that joining period open until January 19th.

Q. Who was used to run the election? What organization actually conducted the election?

A. Public Employee Relations Commission.

* * * *

[49] Q. Let me ask you a question I may have asked but I'm not sure.

Persons who had to join by January 19th, what did they have to do in order to become members, to be eligible to vote?

A. They had to sign a card saying they wanted to be members of F.I.E.A. and pay their first month's dues.

Q. And what amount?

A. $4.00.

Q. How many new members were picked up as a result of that?

A. I believe 132.

* * * *

[53] (By Mr. Wendel): Ms. Ard, did—after the notification from PERC as to the results of the affiliation vote, did First Bank Independent Employees Association apply for a charter from the R.C.I.U.?

A. Yes, we did.

* * * *

[54] Q. (By Mr. Wendel) Ms. Ard, I'd like to have you—to show you this framed document which says Retail Clerks International Union.

Is that a copy of the charter you received from the International?

A. Yes, it is.

Q. Is the document which has been marked as Petitioner's No. 17 a copy of the wording of that charter?

A. Yes, it is.

[Petitioner's Exhibit 17 received]

* * * *

[57] Q. (By Mr. Wendel) Ms. Ard, who were the officers of the [58] union prior to the affiliation vote?

A. State-wide officers were myself as President, Cathy Keene, Treasurer, and Sharon Nelson as Secretary.

Q. And who were the officers immediately after the charter was issued to the union?

A. The same.

Q. Have any changes occurred in those officers since the issuing of the charter?

A. Yes.

Q. Could you tell us what those were?

A. Cathy Keene has left the union and is employed elsewhere and she in her position was replaced.

Q. By whom?

A. Linda Garman.

Q. And how was Linda Garman selected?

A. By appointment of the executive council.

Q. Any other changes?

A. Well, presently, Sharon Nelson has left the bank, the secretary and her position—there has not been a council meeting and her position is not filled.

Q. Where was the physical office of the union located prior to the affiliation?

A. 1331 Third Avenue.

Q. And where is the physical office located since the affiliation?

[59] A. Same address.

Q. Same place?

A. Same, yes.

Q. And in what name were the bank accounts prior to the affiliation?

A. First Bank Independent Employees Association.

Q. And how many people had to sign to withdraw money from those accounts?

A. Two people.

Q. And who were those persons?

A. Myself and the treasurer, and one other council member as approved by the executive council.

Q. Under what name are the bank accounts since the affiliation?

A. Financial Institution Employees of America. Some of our accounts have not yet been transferred because they are being consolidated.

Q. In—the cases—in the cases of those where the name has been changed, who has to sign to withdraw the funds?

A. Two signatures, still; representing the same offices, but actually different individuals because the officers have changed.

Q. And in the case of those accounts where you are in the process of consolidating them but they have not yet been changed, who signs for withdrawal of money from those accounts?

[60] A. The same people.

Q. And does the International have any ability to withdraw any money from your accounts?

A. No.

Q. Does the International have any control over those accounts?

A. No.

Q. Prior to the affiliation, how many permanent staff members did you have?

A. Four.

Q. And since the affiliation, how many permanent staff members do you have?

A. Four.

Q. Is it—is it the same four or a different four?

A. There is one different person because Cathy Keene was a staff member.

Q. Prior to the affiliation, what were your dues—was the dues structure of the union?

A. It was a graduated scale with the maximum being $4.00 per month.

Q. Today, what's the dues structure?

A. It is the same, a maximum of $4.00 per month.

Q. Earlier, we introduced an exhibit which was entitled "First Bank Independent Employees Association Constitution" which was [Petitioner's Exhibit 2].

[61] Do you still function under those bylaws?

A. Yes, we do, except where in it might conflict with the International Union's constitution.

Q. And what would happen in that case?

A. Then, we would obviously have to check the International Union about that and consult the executive council.

Q. Are new bylaws going to be drawn up?

A. We are looking at the International—we have a Bylaw Committee to examine that right now.

Q. Have there been any instances as of yet where there's been any conflict between your old constitution and the International constitution?

A. No.

Q. Prior to the affiliation vote, what kind of aid or assistance did you receive from the Retail Clerks International Union?

A. We received legal assistance—let's see, basically we received legal assistance.

Q. And who assisted you in that regard?

A. Jim Webster, Attorney.

Q. Since the affiliation, what type of assistance have you received from the International?

A. Continuing legal assistance and three staff, International staff members, have been assigned to work for us.

Q. And who did you receive legal assistance from?

[62] A. Continuing from Jim Webster and also from the International General Counsel office.

Q. And the three staff people that are assigned to work with the union, what type of assistance do you receive from them?

A. They do membership service work.

Q. Has the International ever interfered, since their affiliation, in any action that you as President or the Council, the Executive Council, has desired to take?

A. No.

Q. Has the local union been involved in any organizational campaigns or initiated any campaigns since the affiliation?

A. We have not initiated any.

Q. What activities have you been involved in?

A. Well, we have received certain organizing contacts which we have turned over to the International union. Also, two of our staff members have attended organizing meetings conducted by another Retail Clerks' Local.

Q. Which Local was that?

A. Local 1001.

Q. Who is Jim Webster employed by?

A. He is employed by Local 1001.

Q. Since the affiliation, have any grievances been processed by the Bank?

A. Yes.

[63] Q. Which grievances were those?

A. Rob Kallam, Peggy Gull, were two grievances that they processed subsequent to that time.

Q. And who was present at those for the union?

A. I was in both instances, and in the Rob Kallam grievance, Jim Webster also represented the union.

* * * *

[64] Q. Since the affiliation vote, what has been the source of income to the Local Union?

A. Membership dues.

Q. Has there been any other source of income to the Union?

A. No.

* * * *

[65] Q. * * * To change the subject or to go back to something we covered earlier, I showed you—we have introduced into evidence a number of exhibits which

were mailings made by the Union, some to members and some to all employees.

Can you tell us the procedure that was used for mailing those, who actually mailed them out?

A. We used a mailing bureau to handle our mailings and we deliver the letters and the envelopes with our mailing lists and they would actually handle it from that, handle the mailing from that point, label the envelopes and send it out through the postoffice.

Q. And in the case of mailings to all employees, what list did you use?

A. We have—we have two lists, one for the members and one for non-members, and as to all employees, we would just take them to both lists.

* * * *

[66] Q. * * * Ms. Ard, did the Union use something called the hot line?

A. Yes.

Q. Could you explain what that was?

A. It was a recorder-telephone setup. We actually had two setups, one for labor calls and one for Watts line, Statewide Watts line.

Q. And what was the hot line?

A. It was a 60-second recording message, generally the same message on both the in-town and the out-of-town lines.

Q. And how was the existence—was its existence made known to the members?

A. Yes.

Q. And how was that accomplished?

A. We first entered negotiations, we publicized information both to members and I believe the non-members, and we also sent a packet of wallet cards to our representatives to distribute the phone numbers and we periodically republished the phone numbers.

Q. Where did you—where did you publish the numbers?

A. In our mailings to the employees.

[67] Q. Show you what's been marked Petitioner's Exhibit 23 which runs from 23(a) through (z), and ask you if these—can you identify what those are?

A. These are the drafts we used to give our—to do our recording on the hot line message.

Q. Would those drafts—were those the drafts you used when the recordings were made?

A. Yes. They are not exact transcripts because, in some cases, there would be, you know, stick in information on the meetings that would be different for Seattle from the out-of-town one, and, you know, sometimes just wouldn't read it exactly as written but that's what we did read off.

Q. How closely did you read off of those?

A. Usually, pretty closely.

[Petitioner's Exhibit 23(a)-(z) received.]

* * * *

[69] Q. How many at that time were on your Executive Council?

A. I cannot remember offhand how many vacancies we had on the council at that time. I believe there were about 26 or 27 council members at that time.

Q. And did you say, there's 21 names on the charter?

A. Yes.

Q. Was there any opposition from any of the people who were on the executive council whose names are not on there?

A. No.

Q. No opposition?

A. That's correct.

* * * *

[74] MR. WENDEL: I would also note that Mr. Hutcheson and I will enter into a stipulation that the number of employees in the Unit at the time of the affiliation vote in January 1978, was approximately 4,790.

MR. HUTCHESON: 4,790 is an acceptable figure for the size of the unit immediately before and immediately

after the affiliation election and the Employer will so stipulate.

HEARING OFFICER: And you would so stipulate too?

MR. WENDEL: I so stipulate.

HEARING OFFICER: The stipulation is received.

* * * *

[82] [Cross-Examination]

Q. You mentioned, aside from the mailings, that the membership meetings held at which the subject of affiliation was discussed, do you recall that testimony?

A. Yes.

* * * *

[84] Q. All right.

And these you characterize as membership meetings, correct?

A. Well, they were for all employees.

Q. Well, in fact, they were not attended primarily by members if not solely?

A They were not attended solely by members.

Q. But primarily by members, is that correct?

A. That's correct.

* * * *

[99] Q. (By Mr. Hutcheson) Ms. Ard, you testified that the sole source of revenue for Local 1182, the Petitioner, has been dues income, correct, of the members?

A. Yes, that's correct.

Q. Is that true also with respect to the independent union, prior to affiliation?

A. That's correct.

* * * *

[117] Q. Does not employer's Exhibit No. 5 refer to trade and—trade and jurisdic—trade and geographical jurisdictions that are substantially different from those contained in [118] the independent union's constitution?

A. They are different.

Q. And are not persons other than employees of the Seattle-First National Bank eligible for membership in Local 1182?

A. Yes, they are.

Q. They are eligible?

A. Yes.

Q. Is it not true that membership eligibility in the independent union as set forth in Article 3(a) of the constitution—is that membership not limited to employees of Seattle-First National Bank?

A. Yes.

Q. Located in—within the state of Washington?

A. Yes.

* * * *

[126] Q. Is the Petitioner, Local 1182, affiliated with the district council of Retail Clerks, as identified in the constitution?

A. Yes.

Q. Is the Petitioner, Local 1182, affiliated with a county labor council?

A. No.

* * * *

Q. (By Mr. Hutcheson) Will it be—do you intend to have Local 1182 affiliated with a county labor council?

A. Not in the foreseeable future.

Q. Isn't it true that the international constitution urges you to do so?

A. Yes.

Q. Is Petitioner, Local 1182, affiliated with the Washington State Labor Council?

A. Not directly.

Q. Is it affiliated through the district council?

A. I believe it may be.

Q. Is Petitioner, Local 1182—does it have a negotiating [committee?]

[127] A. Yes.

Q. Could you identify the members of that committee?

A. Yes, myself, Lucille Ward, Dick Smith, Laura Tieg, Nancy Holland and Linda Garmen.

Q. Does the Petitioner, Local 1182, have an elections committee?

A. We haven't had an election, so I really don't know.

Q. Has the Petitioner designated people to serve on a committee known as elections committee?

A. No.

Q. But such a committee did exist in the independent union?

A. Yes, although you perhaps misunderstand the designation.

Q. Is there not a reference in Article 11, paragraph (b) of the independent union's constitution, to an elections committee?

A. That's correct.

Q. So one did exist, did it not?

A. Oh, yes.

Q. Does Petitioner 1182 have a grievance committee formally designated as such?

A. No.

Q. One did exist under Article 11(d) of the Independent union constitution, correct?

A. One did not exist, no.

[128] Q. Did not?

Constitution called for one though, didn't it?

A. Yes.

Q. Did a board of appeal exist under Article Roman Numeral 12 of the independent constitution?

A. Under—you know, it's been so long since I've read that, but I believe that's a committee of the whole of the council, and anyway—something of that nature. It's never been enforced, activated by any appeal, so I really can't discuss that with any intelligence.

Q. Now, you have testified to a change—in fact, two changes in the treasurer's position, correct?

A. That's correct.

Q. And you have discussed—you have just testified to consolidation of the secretary and treasurer position, in title?

A. In title, yes.

Q. Is it not also true, since the affiliation there have been two new vice-presidents come onto the scene?

A. That's correct.

Q. Is it not also true there have been changes in what you call union representatives, unit representatives, or shop stewards, since the affiliation?

A. Oh, yes.

Q. Petitioner's current dues are how much per month?

[129] A. $4.00 per month on the graduated scale.

Q. Is the graduated scale still in existence?

A. Yes.

Q. Now, you're—Petitioner Local 1182 is currently operating under the International's constitution, correct?

* * * *

A. I believe my testimony is that we were operating under the independent constitution except where a conflict exists, when it conflicts with the International's constitution.

* * * *

[130] Q. (By Mr. Hutcheson) You testified that the three international staff members—the three International Union staff members assigned to your local following affiliation were performing membership service work.

* * * *

Q. Would you define for us membership service work?

A. Yes, they conduct membership meetings, assist the unit reps, basically the same work as our staff members in the field have always done.

Q. Now, there's some documentation that references to three additional such persons.

A. Pardon me?

Q. There's some documentation and some testimony that refers to three additional such persons.

[131 Do there exist other international representatives who perform this work, other than these three you had in mind?

A. Not at this time, no.

Q. All right.

So to make sure I understand your testimony, you said the international staff members perform services, essentially similar to those performed by local union staff members, correct?

A. That's correct.

Q. Are there other than those three individuals who work for the local, performing such services?

A. I think we've gotten assistance from time to time from others. No one currently.

Q. Can you identify, again, the names of those three individuals?

A. Currently, Mike Young, Dawn Cook and Walt Derry.

Q. Cook, Young? Dawn Cook?

A. Yes.

Q. Mike Young, and?

A. Walt Derry.

Q. Walt Derry.

And the current local staff members are whom?

A. Myself, Nancy Holland, Gene Hardy, Carol Miller.

Q. Carol Miller?

A. Um-hum.

[132] Q. What position does Carol Miller have?

A. She's a clerical employee with the union.

Q. Was she prior to affiliation?

A. No.

Q. So essentially, then, have you four, plus the three internationals, for a total of seven, and the majority of those are now different, performing those services since affiliation, rather than before?

Different individuals?

A. There's only one change on our staff.

Q. If you add the three to the four, you have seven performing the so-called membership services work.

Is it not true that four of the seven are different individuals who were not members of the staff, either directly or indirectly, prior to affiliation?

A. Not to split hairs, but only three of those perform membership service work, but four of them are different individuals.

Q. You said you were employed by Petitioner, right?

A. Yes.

Q. Does that mean Petitioner pays your salary?

A. Yes, Local 1182 pays my salary.

Q. Local 1182 pays your salary?

A. That's correct.

Q. Do you receive a salary from any other organization?

[133] A. No.

Q. Who is considered the employer of Nancy Holland?

A. Local 1182.

Q. Does she receive income from the international?

A. No.

Q. Who is the employer of—what was the name?

A. Gene Hardy.

Q. Gene Hardy.

A. Local 1182.

Q. Does she receive income from the international?

A. No, she doesn't.

Q. Same true of Carol Miller?

A. That's correct.

Q. Do any of the three international representatives receive anything from the local?

A. No.

* * * *

[141] Q. Has the international union at any time agreed to [142] provide you any subsidies in the future? Made any commitment to that effect?

A. They have committed themselves to examine the situation if we needed subsidies.

Q. Was there any condition to your negotiated agreement on affiliation that was discussed with the international representatives back in December of 1977, relating to subsidies?

Is that part of the deal?

A. The only thing, the non charging of the per capita t[a]x, I think is considered a subsidy, although it's just

based on cash income and it's not—it's basically a reimbursed expense. So that is a subsidy item, as far as the international is concerned.

* * * *

[153] WITNESS ELLIOTT WILLMAN

* * * *

Q. (By Mr. Wendel) Mr. Willman, what organization are you presently employed by?

A. Northwest Economic Council, Local 900, Retail Clerks International Union.

Q. And what is your position with that organization?

A. President.

[154] Q Did that organization, some time in the last few years affiliate with the Retail Clerks International Union?

A. Yes.

* * * *

[156] Q. Since the affiliation, has there been any action that the executive board wanted, or the membership at a meeting, indicated it wanted to take, which it was directed not to take by the International?

A. No.

Q. Since the affiliation, has the International ever directed your activities?

[157] A. No. They give us suggestions, but we're allowed to make the decision.

Q. Has the International ever directed you in any collective bargaining negotiations that you have been involved in?

A. No, they've never directed us. They've assisted us if we've requested help.

Q. Has the International president ever asked to see your contract proposals prior to submission to the membership?

A. No.

Q. Since the affiliation, have you raised your dues?

A. Yes. We've both raised and lowered our dues.

Q. Could you explain to us what happened in that regard?

A. Right. At the time of the affiliation, we had two dues rates. We had a $9.00 per month dues rate for employees under contract, and we had a $5.00 a month dues rate for employees not under contract, and so we raised the $5.00 due rate to $6.00, and the $9.00 dues rate stayed the same, except for part-time employees under contract, we lowered it from $9.00 to $6.00.

Q. Why did you make those changes?

A. The International constitution has a minimum dues rate of $6.00, and although we had been advised by the Vice-President Hofer that we could request a waiver and continue our $5.00 dues rate, we felt, for the dollar difference, we'd go ahead and change that one, and at the same time we lowered, [158] lowered the part-time dues rate to $6.00.

* * * *

[162] WITNESS DONALD J. HOFER

* * * *

Q. (By Mr. Wendel) Mr. Hofer, who are you presently employed by?

A. Retail Clerks International Union.

Q. And what position do you hold with them?

A. International Vice-President and Director of the Northwest Division.

[163] Q. And what geographical area does that division cover?

A. Six states, Washington, Oregon, Idaho, Montana, Wyoming, Alaska.

Q. Could you briefly tell us what your functions are in that position?

A. Well, to aid and guide, advise, help, local unions within the division. We have something like thirty some local unions in the division. To assist them bargaining, organizing, administratively.

* * * *

[165] Q. Mr. Hofer, are you the highest ranking representative of the International in the northwest area?

A. Yes.

Q. And what control do you exercise over the local unions in this area?

A. What control?

I don't have any control. Just to assist them and advise them and work with them. Usually it's a matter of the locals asking us for assistance. That's what we do. No control.

[166] Q Can you require the local to take any—engage in any activity that it did not want to engage in?

A. No.

Q. Can you explain to us the kind of subsidies that may exist, that the International may give to the local union?

A. Well, we have several different types of subsidies. You have an organizing subsidy. We have a membership service subsidy. Some subsidies run directly to help with some legal fees. Financial help—they vary. Most of them are for organizing subsidies.

Q. Who determines if a local union is to get a subsidy?

A. International president.

Q. Can you explain to us the procedure, how it's determined that the local is to get a subsidy?

A. Well, normally, the local will come to you and say look, we want to organize, using the organizing subsidy as an example. We want to organize, and we don't have enough money, we can't hire a person, or we can afford to pay a half of a person, and I'll sit down with them and review their financial situation and their targets for organizing, and if they can't afford to go the full bore on an organizer, we'll probably pay for all of it, or within some limitations.

Some cases we'll go on a back to back, where they pay half and we pay half, and after we get those fundamental facts down, then we—I make a recommendation

to the [167] International president we subsidize local so-and-so for three months—usually three months at a time. Renew it at that time if we think it's necessary, or if it's going to be productive.

Q. Is there any formula based on the membership in determining subsidies?

A. No.

Q. In the case where a local union affiliates with the International, independent union affiliates with the International, what by-laws or constitution does it operate under until—well, what by-laws—what constitution or by-laws does it operate under?

A. Well, they can operate under their own by-laws, unless they're in conflict with the International constitution. Now, those parts of their by-laws that are not in conflict, they can go ahead and use—you know, use them.

Q. Are they required to develop new by-laws which are submitted to the president?

A. Yes, We—after a certain period of time, we ask them to adopt local union by-laws and they have to be submitted to the International president for approval.

Q. I'm going to hand you what's been marked as Employer's Exhibit No. 1, which is a copy of the R.C.I.U. constitution, and I'm going to ask you questions about various provisions of that.

[168] A. All right.

Q. Turning first to 8(b), which is found on page 4.

A. Eight (b)?

A. Right.

Q. Eight (b), okay.

Q. Let me ask you first, how—when a local union goes on strike, could you tell us briefly what that process is used, what the procedure is when a local union goes on strike?

A. First the local union has to vote by its affected membership, to go on strike, by secret ballot. After they've done that, and I'm not sure it's two-thirds majority or not, but after they've done it, they advise me

office and request strike sanction. I then advise the International president that Local so-and-so has requested a strike sanction, and I set forth, you know, the number of people involved and some of the issues, and ask him to issue strike sanctions, subject to my final release, and then the local is notified that they have strike sanction, and subject to release from my office.

Q. In the normal situation, are those procedures followed by the local unions?

A. Yes.

Q. Are there instances where a local goes on strike where there is not a strike sanction from the International [169] president?

A. Yes.

Q. And what is the effect of a local union striking without first getting sanctions from the International president?

A. Well, I think it's—until that strike is sanction[ed] they are not eligible for strike benefits. Some locals have struck without it.

Q. Okay.

Now, turning to Section 8(b), now, could you explain to us what that section would—what that section refers to?

A. Well, pretty much what it says. I don't mean to be evasive, because I've never, in the twenty years that I've been an employee or elected official of the union, I've never seen it used, and I've served on the International executive board for three years, and I've never had it come up. I really don't know what the thinking was when it was legislated into the constitution. But it pretty well speaks for itself, but—

Q. Let—I'm sorry.

A. Well, we can't—the International executive board can't—we can authorize a strike, but we sure can't call one. The local union has to vote to strike.

Q. Okay.

[170] A. In other words, the International executive board cannot force a local union to go on strike.

* * * *

Q. Turning to Section 9 (k) on page 6, which is on trusteeship provisions, could you explain to us as best you understand, when a trusteeship would be imposed by the International?

A. Well, my limited experience with our trusteeships has been totally—not totally, but 99% of the time when there's been corruption in a local union, specially by an officer and funds are being misspent or stolen, or channeled what we feel is improper places, and in order to protect the resources of the membership, we've trusteed the local. It's something we really try to stay away from, if we can.

Q. Could you tell me, based on your last four or five years, how many trusteeships there have been imposed by the International?

A. Let's see, one, two, three—I can think of four, four trusteeships.

That's about—out of about 215 locals.

* * * *

[171] Q. Turning to Section 32(a), found on page 20.

A. Page 20?

Q. Yes, Section 32(a).

A. Yes, sir.

Q. Can you tell us what the purpose of this section is, whether it's ever been used?

Q. Well, the purpose, as I understand it—now, this is a contract proposal before it's submitted to the employer, as I understand 32(a), the purpose, it's submitted to the [172] International president, to make sure that that proposal is not inurious or used against other local unions or other groups of employees, a sweetheart deal, or whatever you want to call it, to make sure that standards are maintained.

Has it ever been used, not to my knowledge, and I was Director of Research and Education, Collective Bargain-

ing, and we never—any time I served in that position and all the time I served in the general office and as a staff negotiator, we never—it never was used.

* * * *

[Cross-Examination]

Q. (By Mr. Hutcheson) Mr. Hofer, did you say there were—how many local unions are in the International?

A. Well, there's probably, Mr. Hutcheson, now, I think, [173] probably, around 300, and I'm going to give you a wild guess, 340. Since the merger of the boot and shoe union, they brought in a—quite a few small local unions, and I just don't know the number, but at the time that I was acquainted with the trusteeships, it was a question, there was 214 or 15, or 205—I don't recall. They've merged and we've chartered new ones. It was over 200, though.

Q. But now there are over 300?

A. Now there are probably over 300 locals, because of the boot and shoe merger. I'm sorry, I just don't know, because they brought in several local unions, and not being in Washington when the merger took place, I don't recall the number.

Q. Your prior answer, you thought 340? Is that—

A. Could be—I'd say over 300. I'm sure they brought in at least a hundred local unions.

Q. Regarding the Northwest Division, which you oversee, can you identify any contracts, collective bargaining agreements that run between one of your locals and the —and a commercial bank?

A. No.

Q. Can you identify any contracts that run between a local you have in your organization and any other financial institution?

A. That could be difficult, because some of our stores have [174] a built in savings and loan in the s[to]re, and

in some places we represent those people, and that could be a financial institution. I just don't know, right now, which ones they are.

Q. You have have regular banks?

A. No, I don't have a bank, per se, as we know a bank, or a savings and loan, as we know them, but a lot of our stores have these cash and bank outlets in, our people work in.

Q. Aside from that, for the moment—putting aside the Petitioner, excluding the Petitioner's situation—

A. 1182?

Q. 1182. Do you have a local in your division that represents a barg[a]ining unit, anywhere, of banking employees?

A. No.

Q. All right.

A. Tried a few times, but—

Q. And how many local unions did you say are in your Northwest Division?

A. Well—

Q. Approximately 30?

A. The only reason I'm being hesitant—I think there's 30, we've merged some, it was 32, 31, somewhere —I'd say 30.

Q. As an International Vice-President and Director, and [175] directing your attention to Section 15 of the constitution.

A. What page?

Q. Page nine. Specifically Section 15(b) of Employer's Exhibit No. 1.

A. Um-hum?

Q. Could you tell us how many convention delegates, delegate votes have been assigned to Local 1182?

A. No, I can't, right now.

If you look at those, you'll see you take those convention delegates in the year preceeding the convention, and their membership at that time is held in—what do you call it? Attorneys have a word for it. In flux, and then

you—then you make your—at that point, and I think it's December of the year before the convention is held, you say your membership was so much at that time, and based on that membership will be how many delegates.

Q. That hasn't happened yet for this local?

A. No, no, and for any local. I coudn't tell you for any local, what their convention delegates would be.

* * * *

Q. (By Mr. Hutcheson) This just occurred to me. Could you give us an approximate number of how many [176] members of the Retail Clerks International Union there are?

A. You mean nationwide?

Q. Yes.

A. Maybe an approximation 750,000.

* * * *

Q. (By the Hearing Officer) Are there any employees who are not employees of Seattle-First National Bank, who are presently members of Local 1182?

A. I don't understand.

Q. As I understand it, Local 1182 can encompass other, members other than employees of Seattle-First National Bank, and my question is, are there any such members now?

A. Members other than employees of Seattle-First National Bank?

Q. Right.

A. No.

Q. All right.

Approximately how many members are there in your district?

A. Well, I watch that rather closely. I'd say we have right around fifty-five to 57,000 right now. Didn't check it this morning. But it's 55,000, and climbing.

* * * *

[198] WITNESS JERRY ARD, recalled

* * * *

HEARING OFFICER: * * * Ms. Ard, since affiliation, has the Petitioner, Local 1182, received any funds from any source other than dues?

THE WITNESS: No.

* * * *

[204] Q. [Mr. Hutcheson] Well, before the affiliation election was actually conducted, did the—the union was aware of the bank's position as to the voter eligibility, isn't that correct?

A. We were aware of it some time in January, I believe, the bank issued a statement. Second or third week of January.

Q. Isn't it not true that prior to the affiliation election, during discussions at the bargaining table, that bank representatives told union representatives that as far as the bank was concerned, under its understanding of Board law, that all employees in the bargaining unit should be given an unqualified opportunity to participate in the affiliation election?

A. I don't recall whether that was discussed at the bargaining table.

Q. It is—but you will admit, will you not, that the union was aware the—of the bank's position on this issue prior to the election?

A. Yes, we were.

Q. And it was the bank—the union's policy to limit voting opportunity to members, as you defined them?

A. Yes.

* * * *

[211] Q. (By Mr. Hutcheson) Prior to the attempted affiliation, who controlled the trade jurisdiction of Firstbank Independent Employees Association?

A. Under the constitution, the membership.

Q. Independent union controlled that, correct?

A. Um-hum.

Q. And the membership would control that, correct?

A. Yes.

Q. Trade jurisdiction of Local 1182 is controlled by the international union, is that not correct?

A. I don't know how to define the—it's different now. I don't know who control—how you say it's controlled.

Q. Doesn't the International Union constitution, as well as Mr. Wynn's letter to you of March, 1978, clearly state that the trade jurisdiction of the local union, Local 1182, will be defined by the International president, Mr. Wynn?

A. Yes.

Q. Prior to the attempted affiliation, who controlled the scope of geographic jurisdiction of the independent union?

A. The F.I.E.A. constitution.

Q. For who, though, would make that decision?

A. Membership.

Q. Of the independent union?

A. Hum.

[212] Q. But the geographic jurisdiction of Local 1182 is controlled by the International Union, correct?

A. I don't understand. I'm not an expert on the International constitution. I'm really not perhaps the right person to ask that question of.

Q. Doesn't it state in the third paragraph of Mr. Wynn's letter to you dated March 28, 1978, Employer's Exhibit No. 5, that the geographical jurisdiction of this local union, referring to Local 1182, shall encompass the City of Seattle, the State of Washington, or such area as may be determined from time to time by the Retail Clerks International Union?

A. Yes, it does.

Q. So the International Union determines the geographic jurisdiction of Local 1182?

A. It would so appear.

Q. Same is true of trade jurisdiction, right?

A. Yes.

Q. Before affiliation, Ms. Ard, could anyone who was a member of Firstbank Independent Employees Association have been disciplined for violating any constitutional laws of the International Union?

A. No.

Q. Could any independent union member have been disciplined for violating a collective bargaining agreement?

[213] Disciplined by the union?

A. I have not reviewed the discipline section of our constitution at some length. I know there are disciplinary provisions, never used.

Q. Handing you a copy of the independent constitution, Petitioner's Exhibit 2—

A. I believe I've got one here.

Q. Okay.

Can you—would you review the provisions, just quickly?

A. Okay.

It does not cite anything about violations of collective bargaining agreements.

Q. Could the—could an independent union member be disciplined for failing to pay dues, fines, assessments, fees or other financial obligations, to the union, in a timely manner?

A. Yes, they could, under Article 3. They could be suspended by action of the council, at least.

Q. You are referring to definition of members in good standing in Article 3(c)?

A. Yes.

Q. Where it states a member in good standing is not delinquent in the payment of dues and has not been suspended by action of the executive council?

[214] A. Yes.

Q. But doesn't say he can be suspended by the executive council for nonpayment of dues, does it?

A. No, it doesn't say that.

Q. And isn't it true the grounds for disciplining a member of the independent union appear in Article 13, paragraph (c), on page 10 of Petitioner's Exhibit No. 2?

A. Yes.

Q. Nowhere there does it state that a member may be disciplined for nonpayment of dues, fees, assessments, or what have you, does it?

A. No.

Q. Could an independent union member be disciplined for advocating withdrawal from an international union?

A. No.

Q. Could an independent union member be disciplined for attempting to bring about withdrawal from an international union?

A. I—you know, I presume that they could be under Article—under item 3 of Paragraph (c), because knowingly violating the policies and rules of F.I.E.A. duly promulgated, you know, I suppose, that's a pretty open language. I'm—you know, that—this sort of thing could open the door for that.

Q. Was there any policy or rule adopted by the independent [215] union, in accordance with its constitution, that prohibited a member from attempting to bring about withdrawal from an international union?

A. Well, people did vote to affiliate, and thereby brought themselves into the scope of the R.C.I.U., the International's constitution, so I would say yes.

Q. All my questions are prefaced as prior.

A. Prior?

Q. Prior to the affiliation election.

A. No.

Q. Is it not true that no independent member would be—or could be disciplined for attempting to bring about withdrawal from an international union?

A. That's correct.

Q. And again, prior to the affiliation election, could an independent union member be disciplined for criticizing or defaming an international union?

A. No. Good thing, too.

Q. Prior to the affiliation, could an independent union member be disciplined for working on behalf of or accepting membership in a rival international union?

A. It does prohibit dual unionism, which—whatever that might mean.

Q. Prior to the affiliation, could an independent union member be disciplined for disrupting the meeting of any [216] international union?

A. No.

Q. Prior to the affiliation, could an independent union member be disciplined for furnishing lists of local union members, without specific authorization from an international union president?

A. No.

Q. Prior to the affiliation, could an independent union member be disciplined for deliberately interfering with any officer or representative of the international union?

A. No.

Q. Prior to the affiliation, could an independent union member be disciplined for crossing or working behind an international picket line, or one authorized by an international union?

A. No.

Q. Prior to the affiliation, could an independent union member be disciplined for performing acts of insubordination against the authority of an international union?

A. No.

Q. But all of those items just referenced constitute offenses in the case of Local 1182 members, correct?

A. I really don't know, for sure.

Q. Prior to affiliation, did any person or institution outside of the independent union have the authority to [217] exert original jurisdiction over internal matters, disciplinary matters of the independent union?

A. No.

Q. But original jurisdiction can be asserted by the International president as to internal matters of Local

1182, under the International constitution, isn't that correct?

A. I'll have to look at the constitution to see if it does say that.

Q. Have you looked at the International's constitution, Ms. Ard?

A. Yes, I have.

Q. Now, before affiliation, approval of a collective bargaining agreement was an internal matter of the independent union, correct?

A. Yes.

* * * *

Q. (By Mr. Hutcheson) Is it true that Section 32 (a) of [218] the International constitution states that the proposed, the terms of the proposed collective bargaining contract shall be submitted to the office of the International president before approval, upon request, prior to membership action thereon?

A. Yes, it does state that.

Q. No such provision appeared in your independent union constitution, did it?

A. No.

Q. Before affiliation, were proposed collective bargaining agreements of the independent union subject to mandatory review, in terms of the policies, practices and objectives of the international union?

A. No.

* * * *

Q. (By Mr. Hutcheson) Again, directing your attention to Section 32(a) of the constitution, does it not state that such approval, referring to the International approval, shall be for the purpose of determining whether the forementioned [219] terms conform to the applicable to the established policies, practices and objectives of the International Union?

A. Yes.

Q. And no similar provision or review procedure existed with the independent union, correct?

A. No. Correct, yes.

Q. Before affiliation, could the executive board of any international union have the authority to impose a collective bargaining agreement on the independent union?

A. No.

* * * *

[220] Q. (By Mr. Hutcheson) Prior to affiliation, was approval of any outside officer or institution required for amendment of the independent union's constitution?

A. No.

Q. But it is true, is it not, in the case of Local 1182, that any change in the local by-laws or rules, must be approved by the International president of the Retail Clerks?

A. I don't know of any change. I know some changes have to, at least, be approved.

Q. Is it not further true that Mr. Wynn's letter to you of March 28 says the adoption, the initial adoption of by-laws must also be approved by the International?

A. Yes.

Q. Now, prior to affiliation, who controlled approval of dues changes of the independent union?

A. The membership.

Q. Did any officer or institution outside the independent union enjoy the authority to approve or disapprove action as to dues taken by the independent union membership?

A. No.

Q. Is is not true, under Section 30(a) of the International [221] Union's constitution, that dues, initiation and reinstatement fees and assessments established, increased or levied by local unions are subject to the approval of the International president?

A. Yes.

* * * *

[222] Q. (By Mr. Hutcheson) Prior to the affiliation, was there any per capita tax collected for a national political, education fund, by the independent union?

A. I couldn't hear all of your question.

Q. Prior to the affiliation, was any per capita tax collected for a national political education fund by the independent union?

A. No.

Q. Prior to the affiliation, was [any] outside individual or institution required to approve strike or other economic action on the part of the independent union?

A. No.

Q. Prior to affiliation, could any individual or board external to the independent union unilaterally initiate strike action?

A. No.

Q. Prior to affiliation, did any external person or board have the authority to impose a per capita tax assessment for support of strike actions outside the independent union?

A. No.

Q. Prior to affiliation, could any member in good standing of the independent union run for office in the independent [223] union?

A. Yes.

Q. Isn't it true that there was no minimum period of membership required?

A. Just the end of the month prior to the call for the election.

Q. There was, for example, no requirement that the member have been a member for at least one year?

A. No, no such requirement as that.

Q. Prior to affiliation, did any person or board external to the independent union have the constitutional right to arbitrate disputes between the independent union and other organizations or between members of the independent union, themselves?

A. No.

Q. Prior to affiliation, did any outside individual or institution have authority to impose trusteeship and totally preempt local control of the independent union?

A. Unless there's some provision under federal law, but no structure for that.

Q. Was any outside person or institution—prior to affiliation, was any outside person or institution entitled to custody of the independent union's books and records, under any circumstances?

A. No.

[224] Q. Prior to affiliation, were the laws and constitution of any international union deemed supreme over the . . . constitution and rules of the independent union?

A. No.

Q. Before affiliation, was the independent union required to affiliate with the AFL-CIO?

A. No.

Q. Prior to affiliation, were officers or employees of the independent union under any restriction with respect to employment, in the event they terminated their positions with the independent union—, for any reason?

A. No.

Q. There was no noncompete clause?

A. What?

Q. No noncompete clause?

A. I don't know what you're talking about.

Q. No restriction on the ability of a former independent officer to work for any organization that might compete with the independent union?

A. No, there was no such restriction.

* * * *

[Redirect Examination]

[228] Q. Turning your attention to Article 8, which is the affiliation section, let me ask you first, was the affiliation vote conducted in accordance with that section?

A. Yes, it was.

Q. And the last sentence of that section, which says that the ratification election shall be conducted in the

manner provided for amendments to this constitution.

Does this mean that you have to—does this mean that you follow the procedure as outlined for an amendment?

A. That's correct.

Q. Not that you treat it as an amendment to the constitution?

A. That's correct.

* * * *

[229] Q. Was—were copies of the International constitution available to members at meetings?

A. Not only members, but also nonmembers.

Q. Were there ever any objections, during the time of the affiliation vote, were there ever—were there any objctions by any members or nonmembers, as to the eligibility requirements that had been set up by the union?

A. I had a call from one nonmember who questioned, based on a letter issued by the bank, as to whether the eligibility requirements were correct, and I believe it was a woman in the Northwest Region, and she said well, you know, there seemed to be a differing point of view, and I suggested she call the National Labor Relations Board if she wanted further information on it, and that was—and other than that, all I can recall are just questions of information on what the bank's statement was. I did receive objections from members on the bank's position as to eligibility requirements, as opposed to what our position was.

Q. Other than that call that you received, was any protest of any form filed with the local union?

A. No.

* * * *

[241] Q. (By Mr. Wendel) Ms. Ard, can you explain to us what the audit practice was of FIEA, prior to affiliation?

A. Yes, the executive council would order an audit by an independent auditing firm, and after the completion of the audit, a written report would be prepared by our

firm, and that would be submitted to the executive council at the first council meeting subsequent to the completion of that audit, and the council would examine it as a committee of the whole and approve it.

Q. Can you explain to us what the election committee was prior to the affiliation, how they functioned?

A. Yes, the secretary of the union was, under the constitution, automatically the chairperson of that committee. As each election was held, people—council persons would be appointed to function as the committee. It was reappointed each time an election was held.

Q. With reference—there was some testimony about new vice-presidents.

Could you explain to us when those vice-presidents were elected?

A. Yes. The elections were held in March, after the [242] affiliation, but prior to the issuance of the charter on April 1st.

Q. And when did the change in union representatives come about?

A. That's kind of an on going thing. We have new unit representatives being appointed throughout the year, and as people turn over.

Q. Have there been unit representatives appointed since the affiliation?

A. Oh, yes.

* * * *

Q. How many unit representatives were there at the time of the affiliation? Approximate number, if you will?

A. Around 200.

Q. And how many work locations are there?

A. There's about 170 separate work locations.

Q. Are those located throughout the state of Washington?

A. Oh, yes.

Q. Why are there more unit representatives than there are work locations?

A. Well, in the larger work locations, large building sites, we would—it would be split for, say, by department

[243] groups, so the unit—so the members could have access to a unit representative.

Q. With respect to the requirement that members pay dues by the year if they were not on checkoff, who established that policy?

A. It was really an office policy.

Q. Ms. Ard, this may have been asked, but I just want to make sure.

Are there any other members of your organization, other than those, at the present time, other than those employed at Sea-First?

A. No.

* * * *

[245] (Hearing Officer): Also, at this time, in our off the record discussion, the Hearing Officer asked the parties whether the overall unit size of 4,790 employees was applicable, also, as of October, approximately October 15. It's my understanding, based on our off the record conversation, that the unit may have been somewhat smaller, but not in excess of 200 employees, probably.

Is that correct?

THE WITNESS: Yes.

HEARING OFFICER: Ms. Ard indicates that is correct.

Is that correct, Mr. Hutcheson?

MR. HUTCHESON: That's correct.

HEARING OFFICER: So at all times applicable herein, we're talking about an overall unit size in excess of 4,500 employees.

Is that correct, Ms. Ard?

THE WITNESS: Yes.

HEARING OFFICER: Okay.

* * * *

[248] HEARING OFFICER: Ms. Ard, I have a few.

Q. (By the Hearing Officer) What the reason for the change of unit representatives after the affiliation?

A. Turnover. A lot of our people, you know, either leave the bank or they are promoted out of the bargaining unit, or transfer to a different work location, so you would have replacement of them within their work location.

Q. Is that the only reason?

A. We may have had some withdraw, that voted no on the affiliation. I don't know any specifics on that.

Q. You've had turnover prior to affiliation among unit representatives, also?

[249] A. Oh, yes.

Q. Are the members of the negotiating committee the same today as they were prior to the affiliation?

A. Yes, except for one person has left the bank, but that has not been replaced.

* * * *

[250] WITNESS JAMES A. VERSOI

* * * *

Q. (By Mr. Hutcheson) By whom are you presently employed?

A. Seattle-First National Bank.

Q. What's your position?

A. Vice-President and manager of labor relations.

Q. Could you briefly describe your responsibilities and duties in that position?

A. Primary responsibilities are the administration of labor agreements, participation in the negotiation of such agreements, generally acting as chief interpreter of any labor contract, for the management perspective.

Q. Are you personally familiar with the bank's position and involvement in the events which led to this hearing?

A. Yes, I am.

Q. Are you personally familiar with the procedure followed by the Firstbank Independent Employees Association in distributing ballots for the affiliation election?

A. Yes, I am.

Q. Did the bank make known to the Union the bank's position and views with respect to who should be allowed to vote in the affiliation election?

A. Yes.

Q. What was the bank's stated position?

[251] A. That all members of the bargaining unit should be allowed to vote.

Q. And during and following the affiliation election, did your department receive any calls from bank employees regarding the manner in which the union conducted the election, the affiliation election?

A. Yes, we did.

Q. Did employees complaint about the election?

A. Yes.

Q. How?

A. They were unhappy that they were not being allowed to vote. Some were unhappy over the fact that there was an affiliation at all.

Q. How were those complaints received?

A. Telephone calls, for the most part. There were some letters and some petitions.

Q. What did you tell employees who called to complain about the election?

A. We told them what our understanding of the law was, that all members of the bargaining unit should be allowed to vote, and that we were in a position of having to wait and see if it actually happened the way it appeared it was going to, before we could determine some basis for a legal challenge.

[252] Q. Did you receive complaints from employees not members of the union?

A. Yes.

Q. And you also received complaints from employees who were members of the Union?

A. Yes.

Q. Did the bank receive any written complaints from employees who were union members concerning the affiliation vote?

A. Yes.

* * * *

[257] Q. I gather the bank made its position quite clear on eligibility in terms of who the bank felt should vote in the election, the affiliation vote?

A. That's correct.

* * * *

PETITIONER'S EXHIBIT 2

FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION

CONSTITUTION

Adopted October 10, 1970

Amended December 12, 1975

Amended March 19, 1976

Amended April 3, 1977

[FIEA Logo]

PREAMBLE

This Constitution of the FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION was adopted by a majority vote of the membership on October 10, 1970 in order to conduct the affairs of the association and to comply with applicable federal, state, and local statutes relating to labor organizations.

ARTICLE I

Name

The name of this organization shall be FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION, hereinafter referred to as FIEA. The Seattle-First National Bank, a national banking association, is hereinafter referred to as Bank.

ARTICLE II

Purposes

The general objectives and purposes of FIEA are to promote the general welfare of its members, to secure and maintain reasonable working hours, fair rates of pay and other benefits, to provide a collective bargaining agency for these purposes and to represent the will of the majority of its members in furthering these objectives.

ARTICLE III

Membership

A. *Eligibility*—All employees of the Bank at all of its locations and places of business within the State of Washington shall be eligible for membership except: professional employees, confidential employees, supervisors and guards as defined in the National Labor Relations Act as amended; members of other labor organizations

unless such membership has been approved by the Executive Council; and members of the Communist Party.

B. *Admission to Membership*—An eligible employee shall become a member of FIEA upon signing an application for membership.

C. *Member in Good Standing*—A member in good standing is not delinquent in the payment of dues and has not been suspended by action of the Executive Council. A member in good standing may attend meetings and participate in the deliberations, express any views, arguments or opinions on candidates or any other business properly brought before the meeting, subject to reasonable rules and regulations of conduct, uniformly imposed.

D. *Rights*—All members in good standing shall have equal rights and privileges, as defined by law, provided, however, she or he is a member in good standing on the last working day of the month prior to the notice of election,

1. in nominating candidates for office in FIEA;
2. in voting in elections and referendums and the business of meetings;
3. in holding office in FIEA, provided he or she has been duly and properly elected thereto and provided further that he or she:

a. has not become ineligible for membership;
b. has not been convicted of a crime as defined in 29 USA 504;
c. has not knowingly violated any other provisions of Title V of the Labor Management Reporting and Disclosure Act of 1959 as amended.

ARTICLE IV

Conduct of Meetings and Business

Twenty-five percent of the voting members of any body of FIEA shall constitute a quorum for the transaction of business.

Meetings and business of FIEA shall be conducted as prescribed in Roberts Rules of Order unless this Constitution specifically provides otherwise.

ARTICLE V

Organization

A. General rules and procedures which apply to all levels or bodies:

1. All elections and referendums shall be conducted by secret ballot. Ballots shall be uniform in size and color.
2. A nominating committee may be chosen to solicit and nominate candidates and secure their consent to serve if elected.
3. Nominations need not be seconded.
4. Members who have not been formally nominated are eligible for election.
5. A nomination must have the consent of the nominee to serve if elected.
6. Each nominee shall be entitled to have one observer present when the ballots are opened and tallied.

B. *Units*—Each separate branch of the Bank, each major separate subdivision, each separate group of employees located in the large office buildings, such as the head office, the computer centers, central service facilities, Firsbank Card Building and others, so grouped as to facilitate communication, and administration and control, is eligible to form and become a unit of FIEA.

Appendix A of this Constitution lists the units of FIEA. Additions to and deletions from this Appendix A may be made by the Executive Council. Such changes in

Appendix A to this Constitution may be made without affecting the overall provisions of the Constitution and need not be reported to the office of the Secretary of Labor.

1. *Unit Representatives*—As soon as practicable after the adoption of this Constitution and annually thereafter beginning January, 1972, each unit of FIEA shall elect a representative.

a. *Notice of Nominations*—Not less then seven days before the election meeting, written notice shall be prominently posted stating that nominations may be made for the position of unit representative and the time and place of the election meeting. Such election meeting shall be held no later than January 31 at a place chosen so as to permit as many members as possible to attend. The notice shall invite written nominations signed by the nominating member and bearing the written consent of the member nominated to serve if elected, and shall further state that additional nominations will be accepted from the floor at the election meeting.

b. *Election Meeting*—At the election meeting, the chairman shall announce the names of all candidates nominated prior to the meeting and shall call for nominations from the floor. When no further nominations are forthcoming, the chairman shall announce the names of all candidates for the position of unit representative who have indicated their willingness to serve if elected.

The unit representative or temporary chairman of a unit meeting shall not nominate candiates for office but shall have the same voting privileges as any other member. He may choose not to vote unless it is to break a tie, but if he chooses to vote with the other members, he may not vote again even if such vote would break a tie.

c. *Balloting*—Election shall be by written ballot. Ballots need not be printed; however, the size and color of ballots shall be uniform. The chairman shall cause ballots to be distributed to each member and instruct the members to write the name of the candidate of their choice

on the paper and fold it. The chairman shall appoint two or more tellers to collect and tally the ballots. The results of the tally shall be announced by the chairman. The candidate receiving a plurality of the ballots cast shall be elected unit representative.

d. *Assumption of Office*—The unit representative shall take office immediately following the completion of the scheduled agenda for which the meeting was called and shall be the duly elected unit representative until January of the following calendar year or until his successor has been elected. The retiring unit representative shall advise the Secretary of FIEA of the results of the election.

e. *Retention of Ballots*—All ballots shall be kept for one year by the unit representative. The minutes of the election meeting shall be filed with the Secretary of FIEA.

B. 2. *Duties of Unit Representatives*—The duties of the unit representative are:

a. to preside at all meetings of the unit;

b. to maintain records of the unit membership, minutes of the meeting and other pertinent affairs, to make required reports to the Executive Council;

c. to solicit members actively from among eligible employees of the Bank and report to the Secretary of FIEA all changes in unit membership;

d. to call meetings of the unit at least semi-annually or more often on the written request of 20% of the membership of the unit;

e. to keep the unit membership informed of the affairs of FIEA;

f. to ascertain the view, opinions and desires of the majority of the unit membership and fairly represent these views, opinions and desires to the Executive Council;

g. to assist the individual members of the unit on request in grievances against the Bank;

3. *Vacancies*—Whenever a Unit Representative becomes ineligible for this office or if that office is not filled

by regular election, the Executive Council Member of that Region shall declare the office vacant and appoint a Unit Representative from among the members of that unit to serve until the regular election in January of the following calendar year.

C. *Regions*—To facilitate communication, administration and control, FIEA shall be divided by the Executive Council into regions which shall, insofar as practicable, conform to the regional boundaries and numbering system established by the Bank. Appendix B of this Constitution lists the regions of FIEA. Additions to and deletions from the Appendix B may be made by the Executive Council without affecting the overall provisions of this Constitution and need not be reported to the office of the Secretary of Labor.

D. *Executive Council*—The legislative body of FIEA shall be an Executive Council composed of council members from each region and the officers of FIEA. There shall be one council member for each 250 members or fraction thereof in each region.

D. 1. *Election of Council Members*—As soon as practicable after the adoption of this Constitution and annually thereafter in February of each year beginning in 1972, the council member shall be elected by the membership of each region for a term of two years except as hereinafter provided, or until their successors have been elected. Half of the council members elected in the first election shall serve for terms of one year or until their successors have been elected. The length of terms of the first council members shall be determined by lot. If the number of council members in any region is odd, the status of "odd person" shall first be determined by lot, and the length of terms of all "odd persons" shall be determined by lot drawn at the first meeting of the Executive Council. The Executive Council may nominate candidates for Executive Council Members.

2. *Mechanics of Election*—The Secretary shall issue notices of election to all members eligible to vote in each

region entitled to elect a councilperson, not less than 10 days prior to the date of the election fixed by the Executive Council. The election shall be held no later than March 31. Said notices shall specify the date and place of the election and the date by which nominations shall be submitted. The date by which nominations shall be submitted shall be at least seven days after the notice of election. The ballot shall list all eligible nominees and shall provide a space to write in a name of an additional candidate for each office. If the Executive Council orders the elections conducted by mail, all members eligible to vote shall be issued a ballot which shall specify the date by which it must be returned and that date shall be no less than seven days from the date the ballot was issued. Provision shall be made for return, custody, and counting of the ballots so as to insure the secrecy of the ballots and the accuracy of the tally. Election shall require a plurality of the votes cast. The Secretary shall notify the members concerned of the results of each tally of the ballots in a timely manner and shall publish notice of the election of each councilperson in the next FIEA Bulletin. All ballots shall be retained by the Secretary for one year after the election.

3. *Duties of Executive Council*—The Executive Council shall be the policy making body of FIEA, shall meet not less than quarterly, and shall direct the officers in administering the affairs of FIEA and perform such other duties as may be imposed on it in this Constitution. All members of the Executive Council must be notified of each meeting and proof of such notice must be included in the minute book. The Executive Council may employ on the terms it deems appropriate such assistants, employees and professional advisors as may be reasonable necessary and convenient in carrying out the purposes of FIEA.

E. *Officers*—There shall be a President, Eastern Vice President, Central Vice President, Northwest Vice President, Southwest Vice President, King County Vice Presi-

dent, Secretary and Treasurer. The President, Secretary and Treasurer shall be elected from and by the membership at large for terms ending April 30, 1973, or until their successors have been elected, and thereafter for terms of three years. The Eastern Vice President shall be elected by the membership of the Eastern Regions. The Central Vice President shall be elected by the membership of the Central Regions. The Northwest Vice President shall be elected by the membership of the Northwest Regions. The Southwest Vice President shall be elected by the membership of the Southwest Regions. The King County Vice President shall be elected by the combined membership of the Head Office, King County and Seattle-Metropolitan Regions. All Vice Presidents shall be elected for terms of three years except that after election in March, 1973, the Vice Presidents shall draw lots to determine which one of them shall serve for one year, which two of them shall serve for two years and which two of them shall serve for three years, or until their successors are named. There shall also be a Computer Center Vice President who shall be elected by the membership of the Computer Center. The Computer Center Vice President shall stand for election in April, 1976, for a term expiring March 31, 1977, and shall be elected for terms of three years thereafter.

1. *Election*—Election of officers shall adhere to the election procedures stated in Article V, paragraph D. 2.

2. Officers shall hold no other elected position in FIEA, but may serve as members of committees or as employees. Salaries of officers shall be fixed by the Executive Council subject to ratification by a majority of the members of FIEA voting by mail ballot.

3. The President, if willing to do so, shall devote his/her full time to the affairs of FIEA and shall be compensated appropriately.

a. He/she shall preside at all meetings of the Executive Council and the membership of FIEA;

b. Appoint all committees;

c. Serve as ex-officio member of all committees without vote, except the negotiating committee, on which he/she may serve as a voting member;

d. Execute the directives of the Executive Committee, and perform such other duties as customarily pertain to the office of president or are imposed on him by this Constitution.

If the President is unable or unwilling to devote her/his full time to FIEA, the Executive Council may employ an Executive Assistant.

4. The Six Vice Presidents shall determine by lot which is first, second, third, fourth, fifth and sixth in precedence to preside over meetings of FIEA and the Executive Council in the absence of the President.

5. The Secretary shall keep minutes of all meetings of FIEA and its Executive Council. The Secretary may delegate his duties to employees to the extent approved by the Executive Council, but shall be personally responsible to FIEA for the faithful discharge thereof. The Secretary may call for copies of unit minutes. The Secretary shall perform such duties as usually pertain to the office and as may be imposed by this Constitution.

6. The Treasurer shall have custody of all funds belonging to FIEA and shall be bonded in an amount exceeding the amount in his/her custody which shall be reviewed and determined annually in April by the Executive Council. Disbursements may be made on the signatures of the President and Treasurer. The signature of the Treasurer may be printed. The Executive Council may authorize an employee other than the President to sign disbursements. Both the President and any employee authorized to sign disbursements shall be bonded in an amount reviewed and determined annually by the Executive Council. Expenditures in excess of three hundred dollars must be authorized in advance by the Executive Council unless previously authorized by approval of the Budget. The Treasurer shall make quarterly financial reports to the Executive Council. She/he shall make an

annual financial report as of April 30 which shall be audited by independent auditors designated by the Executive Council and a copy of the audited report shall be published to the members. The Treasurer shall perform such duties as usually pertain to the office and as may be imposed by this Constitution.

ARTICLE VI

Budget

As soon as practicable after their election and annually thereafter in April, the officers shall present to the Executive Council a detailed budget for the ensuing year, from May 1 to April 30. Approval of the budget by the Executive Council constitutes approval of all expenditures therein authorized. The budget may be amended from time to time by the Executive Council.

ARTICLE VII

Economic Sanctions

Economic Sanctions—By an affirmative vote of two-thirds of the Executive Council members present at a meeting the Executive Council may determine that economic sanctions should be taken at any unit. Such determination shall be subject to ratification by the members of the unit. Ratification may be accomplished by a majority of the votes cast by not less than sixty percent of the members eligible to vote in the unit or units affected. A unit shall be deemed affected by such economic sanctions whenever the members thereof would in all likelihood be unable to carry out their duties in the normal manner while such sanctions are in effect. The procedures and implementation of such economic sanctions will be at the determination of the Executive Council. The ratification election shall be conducted in the manner provided for amendments to this Constitution.

ARTICLE VIII

Affiliation

Affiliation—Affiliation with other labor organizations may be accomplished by the affirmative vote of two-thirds of the Executive Council and ratification by a majority of the votes cast by not less than sixty percent of the members eligible to vote. The ratification election shall be conducted in the manner provided for amendments to this Constitution.

ARTICLE IX

Expansion

Expansion to include other labor organizations or employees of other banks may be accomplished by the affirmative vote of two-thirds of the Executive Council and ratification of whatever amendments to this Constitution may be required.

ARTICLE X

Dues

Dues—Each member shall pay such dues and assessments as are established by the affirmative vote of two-thirds of the Executive Council and ratified by a majority of the membership in the manner provided by Article XVII.

ARTICLE XI

Committees

The President may appoint such committees as may be required from time to time and shall appoint the following committees:

A. *Negotiating Committee* for the conduct of contract negotiations with the Bank.

B. *Election Committee* of which the Secretary shall be chairperson to provide technical guidance and ensure the proper conduct of all elections in FIEA.

C. *Auditing Committee* to conduct such internal audits of FIEA finances and reports as may be required, but not less than one annually, and to ensure that reports required by the office of the Secretary of Labor are properly filed. In addition, an annual audit will be directed by the President to be conducted by an outside disinterested party.

D. *Grievance Committee* to assist members in processing grievances against the Bank as required.

ARTICLE XII

Board of Appeal

The Board of Appeal shall be appointed by the President, subject to approval by the Executive Council. It shall consist of three members of the Executive Council and four members who are not members of the Executive Council so chosen as to have no two members from the same region unless all regions are represented. The Board of Appeal may adopt and publish uniform and reasonable rules for the conduct of its proceedings which shall be subject to approval by the Executive Council.

ARTICLE XIII

Removal from Office, Succession in Office and Discipline of Members

A. 1. Whenever the President, Secretary, or Treasurer becomes ineligible for this office, the Executive Council shall declare the office vacant and appoint a successor to complete the unexpired term of the office vacated.

2. Whenever any Vice President becomes ineligible for this office, the President shall declare the office vacant

and the Executive Council Members and Unit Representatives of that Region shall, by majority vote appoint a successor to complete the unexpired term of that office.

3. Whenever any member of the Executive Council becomes ineligible for this office the Executive Council shall declare the office vacant and appoint a successor from one of the Unit Representatives or other qualified members of that Region, to complete the unexpired term of the office vacated.

4. Any disability under the foregoing shall not impair the validity of acts done by such Officer or Executive Council Member under color of his office in the normal course of business prior to appointment of his successor.

B. An officer charged by any member with misfeasance or malfeasance in office or with deliberately and willfully violating any federal or state law relating to labor organizations shall be furnished with written charges signed by the Secretary (unless the Secretary is the officer charged, in which case the charges shall be signed by the President), and notice of hearing before the Board of Appeal. The hearing shall be fairly conducted and shall be recorded stenographically. The notice shall afford the accused officer ample time to prepare his defense. The accused officer shall be entitled to be represented by any member in good standing, but not by a non-member. The accused shall be entitled to testify and call witnesses in his/her behalf, to confront his/her accuser, to cross-examine him/her and all witnesses against him/her and shall be granted reasonable access to such records of FIEA as may be necessary or convenient to his/her defense. The Board of Appeal shall decide the case on its merits and render a written opinion setting out its reasons for its decision. A copy of the decision shall be delivered to the accused officer promptly and shall not be made public until after such delivery. If the charges are sustained, the Board of Appeal shall fix an appropriate penalty which may be or include any of the following: removal

from office, restitution, a fine of not more than $1,000.00. The decision of the Board of Appeal shall be final.

C. *Discipline of Members*—Members may be disciplined for

1. misfeasance or malfeasance in office in FIEA;
2. dual unionism;
3. knowingly violating the policies and rules of FIEA duly promulgated in accordance with this Constitution;
4. crossing a lawful picket line established and maintained by FIEA;
5. conduct deliberately intended to frustrate or impede the objectives and purposes of FIEA;
6. Attempting to impair the secrecy of any secret ballot or to impair the integrity of any election or referendum.

Charges against any member shall be filed with the unit representative of the member charged, or, if the member charged is the unit representative, with the Executive Council Member. The unit representative or Executive Council Member shall make a preliminary investigation of the charges and, if he finds that they may have merit, he shall prepare, sign and deliver to the accused member a written specification of charges which shall be specific as to the time, place and nature of the acts or omissions charged. No charges shall be preferred for any act or omission which occurred more than ninety days prior to the filing of the charges. A copy of the specification of charges shall be delivered to the Secretary. In preparing the specification of charges the unit representative or Executive Council Member may have assistance from the President or paid staff. With the copy of the specification of charges there shall be delivered to the accused member a notice of hearing by the Board of Appeal, which hearing shall be not more than thirty days after delivery of the charges. The hearing shall be fairly conducted and recorded stenographically. The accused member shall be entitled to confront his/her accuser, cross-examine him/her and any other witnesses

against him/her, testify and adduce witnesses in his/her own behalf, be represented by any member in good standing, but not by a non-member, have reasonable access to such records of FIEA as may be necessary or convenient for his/her defense and submit written or oral argument in his/her behalf. The Board of Appeal shall render and deliver to the accused its decision as to whether he/she is guilty or not guilty of each charge in the specification. If the Board of Appeal finds a member guilty, it shall recommend a penalty which may include any of the following: expulsion or suspension from membership, fine of not more than $1,000.00, restitution. The decision of the Board of Appeal shall be final.

ARTICLE XIV

Collective Bargaining Agreements

Collective bargaining agreements shall be negotiated by the negotiating committee subject to ratification by a majority of votes cast by the membership. Copies of collective bargaining agreements shall be kept by the Secretary and shall be furnished to members on request.

ARTICLE XV

Employees

Employees of FIEA other than elected officials shall not participate in the internal affairs of the organization beyond the discharge of the duties they are hired to perform and shall make no public statements concerning FIEA affairs without the express approval of the President.

ARTICLE XVI

Bulletin

There shall be a bulletin published from time to time but not less than quarterly under the direction of the President.

ARTICLE XVII

Amendments

Amendments to this Constitution may be proposed by majority vote of the Executive Council or a Unit. If the Executive Council proposes an amendment, it may refer the amendment to the membership for ratification at any time. The Secretary shall issue notice of election to all members eligible to vote not less than ten days prior to the date of the election fixed by the Executive Council. Said notice shall contain the complete text of the proposed amendment and shall specify the date and place of the election. If the Executive Council orders the election conducted by mail, all members eligible to vote shall be issued a ballot which shall specify the date by which it must be returned and that date shall be not less than seven days from the date the ballot was issued. Provision shall be made for return, custody, and counting of the ballots so as to insure the secrecy of the ballots and the accuracy of the tally. Voting may be at unit meetings, by mail or both in the discretion of the Executive Council.

If an amendment is proposed by a unit, it shall be filed with the Executive Council Member who shall call a meeting of unit representatives in that region at a time not less than two weeks or more than sixty days after receiving the proposed amendment. If the unit representatives vote in favor of the amendment, the Executive Council Member shall report the amendment as approved to the Executive Council which in turn shall submit it to the Executive Council which in turn shall submit it to the membership for ratification within sixty days thereafter. The Executive Council may publish its recommendation for or against the amendment and its reasons for its recommendation together with any minority report for consideration by the membership prior to voting.

Ratification of an amendment to the Constitution shall require an affirmative vote of a majority of the ballots

cast. Amendments shall be effective thirty days after ratification.

ARTICLE XVIII

Saving Clause

Whenever this Constitution or any portion thereof, Appendices or Amendments thereto, shall be found to conflict with the provision of federal, state or local statutes, the provisions of the applicable statute shall prevail and the Constitution, its Appendices or Amendments, shall be deemed amended accordingly. Any such Amendments shall be published to the membership at the earliest practicable time.

REFERENDUM

The monthly dues of each member shall be based on the compensated hours in the month for which the dues are being levied. The dues schedule shall be as follows:

1. A member who is paid for more than 72 hours in a calendar month shall be levied $4.00 dues for that month.

2. A member who is paid for more than 16 but not more than 72 hours in a calendar month shall be levied $2.50 dues for that month.

3. A member who is paid for not more than 16 hours in a calendar month shall be levied $1.00 dues for the month. This shall include members on layoff, leave of absence, or long term disability status, or who did not otherwise work during the calendar month but are employees on the payroll.

4. Notwithstanding paragraphs (2) and (3), all officers, Council members, and Unit Representatives of FIEA shall be levied $4.00 dues per month regardless of their payroll status.

Upon application of the member, overpaid dues shall be refunded at least quarterly or at termination of employment. The Executive Council shall determine the dues refund and audit procedures. Each member not receiving pay on the 15th or the last working day preceding the 15th of the month shall be responsible to remit his/her dues to the Unit Representative or the FIEA office.

Approved March 19, 1976

PETITIONER'S EXHIBIT 3

Retail
Clerks
International
Union [letterhead]

December 27, 1977

Ms. Jerry Ard, President
Firstbank Independent Employees Association
1331 Third Avenue, Room 608
Seattle, Washington 98101

Dear Sister Ard:

This is to confirm commitments of the Retail Clerks International Union made to facilitate and encourage the issuance of an RCIU charter to the Firstbank Independent Employees Association to establish a constitutionally autonomous RCIU Local Union.

Following appropriate procedures to effectuate the issuance of an RCIU charter, especially an affirmative vote of the members of the FIEA, the RCIU will issue a charter for a new RCIU Local Union with jurisdiction over bank employees throughout the state of Washington.

The RCIU further agrees that it will financially assist its newly chartered Local Union in a monthly amount equal to not less than the applicable RCIU monthly per capita tax for a period of not less than one year. The International Union will also assign at least one full-time International staff person to work exclusively with the newly chartered Local Union for at least one year. Further, the International Union will review the need for additional financial assistance for the purpose of hiring Local Union representatives on a regular basis.

The RCIU agrees that its newly chartered Local Union, which currently has dues of $4.00 per month, be allowed to increase them to the minimum International dues or above whenever circumstances dictate that they do so.

The International's fee on newly initiated or reinstated members will be waived for current members of the

FIEA, and such fees will not be charged for future members of the FIEA for a period of one year. Such waiver of International fees may be extended on an annual basis upon request of the newly chartered Local Union and approval by my office.

The RCIU pledges to pay the newly chartered Local Union's per capita tax to District Council 45 for not less than one year and further promises to review the need to continue such payments on behalf of the newly chartered Local Union at the end of one year.

The Retail Clerks International Union makes the foregoing pledges because it believes that the issuance of a charter to the FIEA will be in the best interests of the members of both the FIEA and the RCIU and will further the organization of bank employees generally by the RCIU.

With best wishes and kind regards, I am

Sincerely and fraternally,

/s/ William H. Wynn
International President

PETITIONER'S EXHIBIT 5

TO: ALL UNIT REPRESENTATIVES

FROM: JERRY ARD, PRESIDENT; FIEA

SUBJECT: NON-MEMBER SIGN-UP AND EMPLOYEE VERIFICATION

Contact each and every person in the bargaining unit *IMMEDIATELY.*

1. Verify if persons are members or non-members from list provided. If the person is a non-member, encourage the individual to join the union so that they will have an opportunity to vote on affiliation. If they wish to join, have them fill out a membership application and pay a minimum of one month's dues ($4.00). A dues check-off card is not necessary at this time since that provision of the contract is not presently being honored by the Bank. *If the person refuses to join, note this on your list with the date refused.*

2. Verify if the person is on your list. If not, add them to the list with their current address. Check with the person to see if they have recently moved (within the last 90 days) or have had a name change, and add any new information to the list.

3. Collect as much dues money as possible while talking to present members.

ALL OF THIS INFORMATION MUST BE COMPLETED AND IN OUR POSSESSION NO LATER THAN JANUARY 19 EITHER BY MAIL OR PHONE.

PETITIONER'S EXHIBIT 6

[letterhead]

FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION
P.O. Box 187
Seattle, Washington 98111

January 6, 1978

TO: ALL BARGAINING UNIT EMPLOYEES

As you all know, we have been in negotiations with the Bank since July 6 of last year. On October 19, 1977, after 36 negotiation sessions, the Bank presented us with a final offer. The offer was unacceptable, and the Executive Council and the negotiating committee voted unanimously to recommend rejection on October 28, 1977. The membership approved this decision by an 82% majority.

We have met with Bank representatives six times since then and have made some progress, but we still have a long way to go to secure an honorable contract.

When we received the Bank's first proposal in July, it was clear to those of us on the negotiating committee that we were in for hard times on this contract renewal. Knowing that, we began to explore a number of methods to apply pressure to Bank representatives in hopes of getting a contract.

Strikes, boycotts, public relations campaigns, active and passive support from the labor community were either tried or rejected as being ineffective or impractical. Charges were filed with the National Labor Relations Board, and the Bank was found to have violated federal law in their bargaining approach. Accordingly, a complaint was issued by the NLRB, stating that the Bank was using negotiations merely as a pretext and had no real intention of bargaining to conclusion. That com-

plaint is now pending for trial. Realistically, we knew that more would be needed if we were to survive as the bargaining representative for Seafirst employees. The Executive Council authorized the negotiating committee to act as a screening committee to examine the possibility of affiliation with another labor organization and to research these organizations in view of our criteria.

We were looking for an organization with the following attributes:

1. *Autonomy—We wanted an organization that would allow us to retain our own identity and control of our own affairs;*
2. *Strength—Both in membership and finances;*
3. *Good Reputation—We wanted a Union with an established record of progressive service to their membership;*
4. *Professional—Staff and procedures must be professional and businesslike in their approach to problems; and*
5. *Growth—A Union committed to organizing our industry.*

The negotiating committee interviewed unions over the following months and made their report to the Executive Council. The committee unanimously recommended to the Executive Council that due to the Bank's belligerent attitude toward the Union and at the bargaining table there now existed a *need* to affiliate in order to preserve adequate representation, and that the *RETAIL CLERKS INTERNATIONAL UNION* was the only union to meet our needs.

The Council unanimously voted on December 10, 1977, to concur with the negotiating committee's report and adopted a resolution of affiliation. We will be scheduling a vote of the membership on affiliation at a soon to be announced date.

In the interest of fairness and to meet certain legal tests, we want to give *all* employees in the bargaining unit an opportunity to participate in this most important vote.

All *present members* are eligible to vote and should be reminded that due to the Bank's stand on dues check-off, it is necessary for members to self-pay their own dues. You may do so by check to our office, P.O. Box 187, Seattle, WA 98111, or to your Unit Representative.

All *non-members* in the bargaining unit desiring to participate should join FIEA on or before the 19th of January. Contact your Unit Representative or call our office at 624-2923, or toll-free at 1-800-552-7188, for membership instructions.

REMEMBER—To be eligible to vote, non-members should join on or before:

January 19, 1978

Call FIEA—624-2923 or 1-800-552-7188 for instructions or questions.

Sincerely,

/s/ Jerry Ard
JERRY ARD
President

FOR DAILY INFORMATION CALL:

624-3282

1-800-552-7362

PETITIONER'S EXHIBIT 8
[Mailed January 17, 1978]

FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION
P.O. Box 187
Seattle, Washington 98111

THE NON-MANAGEMENT MEMO

The Bank Dexter Horton built nearly 100 years ago has achieved a number of firsts in the Northwest—The most recent first includes the NLRB finding merit to charges against Sea-First for bad faith bargaining, length of negotiations and the number of printings of the now famous "Management Memo." The Bank has come a long way since Dexter brought railroads, street lamps and the first safe to the great Northwest!

Bank Involvement

The upper echelon of Sea-First must be bored with banking and has moved into other areas; namely, involving themselves in the internal workings of your union. The affiliation vote that will be held in the near future has become an item of great concern with upper management.

Our feelings on this matter are simple—FIEA does not tell the Bank how to run its business; they should not try to run ours.

If you feel that the Bank is interfering, please let us know.

Voter Eligibility

This issue was the first step of upper management interference with your Local Union. They cited an NLRB

decision which has as much to do with your affiliation as an apple to an orange. Shame on them—they should have read the case. As a matter of fact, they should have read the NLRB Act so that they would not have to face a hearing in March on bad faith bargaining.

The vote will be members only, and anyone who joins on or before January 19, 1978, will be eligible to participate. So, make certain that all of you join and vote—it's time everyone was united.

Meetings

Starting Friday, January 6, 1978, meetings for everyone will be held statewide, and we will continue these meetings until the vote takes place. Please come, ask questions, become informed, so that you can vote based on *facts.*

The most exciting things about affiliation to everyone so far seem to be:

1. Local Union autonomy will be retained;
2. Better servicing through increased staffing, especially Eastern and Central Washington;
3. Regular business meetings statewide at least once every three months; and
4. Better financial posture and services by affiliating with the RCIU.

If your branch has not yet scheduled a meeting, we will be contacting you very soon—or better yet, call our office and arrange a time. THANKS!

Non-Members

The non-members will be allowed to vote *provided* they sign a membership card and pay one month's dues of

$4.00 on or before *JANUARY 19, 1978.* If anyone is a non-member at your branch or work site, please invite them to join or at least come to one of the meetings held in your area. We feel that once they are informed, they will want to join and help make *our* union stronger.

Mail-Outs

If you know someone who has not been receiving our mail-outs, please have them contact our office so that we can verify that our addresses are correct. Your help is greatly appreciated!

The response to our union taking a positive step strengthening FIEA by affiliation with the RCIU has been more enthusiastic than anyone dreamed. Thanks for all of your hard work and support!

Dexter Horton's bank has a new first to look forward to.

For a recorded message call:

HOT LINE

King County—624-3282 Long Distance—1-800-552-7362

If you have questions, call:

King County—624-2923 Long Distance—1-800-552-7188

PETITIONER'S EXHIBIT 10

FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION
P.O. Box 187
Seattle, Washington 98111

January 27, 1978

Dear FIEA Member:

We have been very pleased at your interest in the proposed affiliation with the RETAIL CLERKS INTERNATIONAL UNION. This is the most decisive step you can take to protect your union representation at the bank. There have been very good discussions about affiliation at the membership meetings around the state. This letter will cover some of the points raised at those meetings. I also urge every member to be sure and attend the regional meetings on February 4 and 5 so you can have your questions answered.

The bank has decided on a course of action to eliminate FIEA. The bank's contract proposals and its conduct at the bargaining table make this clear. This is a new attitude from the bank. However, you have turned FIEA into an effective union in the past three years. This has obviously annoyed senior management who expect you to accept their definition of your "best interests". Instead, you have begun to establish long-term goals that can only be achieved when other groups of bank workers are unionized. In fact, RCIU's excellent record in organizing was a major factor in the Executive Council's selection.

The various management memos have obscured the effects of affiliation. The bank lists the fees of other locals as if this might affect you. They don't! Remember that we will be an autonomous (separate and independent) local of RCIU. Your vote sets dues or any other fees. We

would, of course, be required to conform to the provisions of RCIU's constitution except for the $6.00 minimum dues and initiation fee which have been waived until *you* choose to make a change.

Affiliation will not change the fact that you control your organization and make its decisions. RCIU's constitution requires the local to be run in a democratic manner the same as FIEA's. For example, strike action would still be decided by you. Nor would you be affected by strikes of other locals.

The Executive Council took great care in making the decision before recommending affiliation with the RETAIL CLERKS INTERNATIONAL UNION to you. We all recognized that the bank had placed your union in grave danger. You obviously wanted to continue to receive the protection of union representation. In fact, membership has now increased to 55 percent of the employees. From there the Council sought the best possible affiliation choice. RCIU, in every way, met the requirements necessary to protect and improve the quality of your union representation.

The bank has sought to persuade FIEA membership that you have nothing in common with RCIU members or with other bank workers. Banks, like other groups of employers, tend to work in concert in setting wage and other benefit levels. One difficulty you face in bargaining substantial gains in these areas is that Seafirst employees are not a sufficiently large enough part of the total bank work force in the state. Real bargaining pressure will exist when a majority of all bank workers in Washington are unionized. RCIU understands this as well as your particular representation problems. It is well acquainted with large employers spread out into many widely separate work locations. Besides its experience in representing clerical workers, RCIU as a dynamic, growing organization has diversified and pro-

vides excellent union leadership in a number of fields. It already represents some of the very few unionized banks nationwide.

Your Executive Council unanimously recommended RCIU because it can provide you with the support and expertise needed without injuring the democratic structure you have created. Added financial strength, increased staff, free legal advice, and a commitment to organize bank workers would be an important gain at any time. Now it is crucial. We urge every member to cast a YES ballot.

Sincerely,

/s/ Jerry Ard
JERRY ARD
President

JA:njh

PETITIONER'S EXHIBIT 11

Retail
Clerks
International
Association [letterhead]

February 2, 1978

Dear FIEA Member:

Shortly you will be receiving your ballot and voting on whether you wish to affiliate with the RCIU as an autonmous chartered local union.

Since the affiliation was announced on January 9, 1978, our staff has had the pleasure of meeting with your membership statewide. Over 1,500 FIEA members have come to these meetings, asked questions and expressed not only a strong desire to maintain, but strengthen the collective bargaining process that Seattle-First employees have enjoyed since 1939.

As the frantic pace of the last month is rapidly coming to a close, we of the Retail Clerks International Union staff would like to pause for a moment and express our sincere appreciation for the interest, support, honesty, and hospitality we have received at the meetings held statewide.

Your officers who were kind enough to allow us the opportunity of expressing our appreciation have prepared a list of the most frequently asked questions for those members who, because of work, illness, or conflicting family obligations, were unable to attend the meetings in their area. Please take a minute or two to review them as they answer many questions that have been raised

and we hope you are able to attend the membership meeting in your area over the weekend of February 4th and 5th.

Sincerely,

/s/ D. J. Hofer
D. J. Hofer and Staff
Northwestern Division
Retail Clerks Int'l. Union

PETITIONER'S EXHIBIT 14

STATE OF
WASHINGTON

Dixy Lee Ray
Governor

PUBLIC EMPLOYMENT RELATIONS COMMISSION
603 Evergreen Plaza
Olympia, Washington 98504
206 753 3444

Marvin L. Schurke, Executive Director

February 28, 1978

Ms. Jerry Ard, President
Firstbank Independent
Employees Association
P.O. Box 187
Seattle, Washington 98111

Mr. Don J. Hofer, Director
Retail Clerks International Union
320 Vandveer Building
2819 First Avenue
Seattle, Washington 98121

Re: Firstbank Independent Employees Association
Case No. 1327-E-78-264

Gentlepersons:

In response to your requests by letters dated January 11, 1978 and January 12, 1978, and in accordance with the procedure outlined in my letter of January 13, 1978, this agency has conducted a secret-ballot election, by mail ballot, among the members of Firstbank Independent Employees Association on the question:

"Should Firstbank Independent Employees Association (FIEA) affiliate with and become an autono-

mous local union of the Retail Clerks International Union (RCIU)?"

The official ballots were delivered to this agency directly from the printer, under seal. All voting materials were assembled by our staff in this office, under my general supervision. The "outbound" envelopes were deposited in the U.S. Mail by a member of the PERC staff on February 4, 1978 at Seattle. As mail ballot envelopes were returned to this office, they were checked off against the eligibility list and were stored under lock. The envelopes were opened and the ballots were counted at the Century House Hotel in Seattle on February 22, 1978 under my personal supervision. Only PERC personnel handled these ballots throughout the proceedings. We retained all voting materials at that time. We re-checked all of the "secret ballot" envelopes before disposal and found two ballots which had been missed in the opening process. A re-check of the "return" envelopes produced some additional ballots which had been missed in the opening process. Those ballots have been included in the recount tally which follows. We will retain the "return" envelopes for use in any future litigation.

The results of the election are as follows:

NUMBER OF MEMBERS ON ELIGIBILITY LIST	2,840
BALLOTS RETURNED TO PERC UNDELIVERABLE OR REFUSED	9
BALLOTS VOIDED:	
Original ballot returned and voided where replacement ballot had been issued	1
Re-issued ballots voided due to inability to compare signature as required	5
Ballot voided due to obliteration of return address validation sticker	1
Ballots cast blank	1
Mail ballot envelopes returned with no ballot enclosed	2
Ballots spoiled	3
	13
BALLOTS VOTED "YES"	1,206
BALLOTS VOTED "NO"	774

I trust that these results are conclusive, and that further action will not be required on our part. I take this opportunity to thank the parties for their assistance and cooperation. The strong percentage of ballots voted and the extremely small percentage of ballots returned undeliverable must be attributed to your attention to detail in the preparation of the eligibility lists. This certainly made our task easier, and this was in fact the smoothest large mail ballot election I have ever supervised.

Very truly yours,

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

/s/ Marvin L. Schurke
MARVIN L. SCHURKE
Executive Director

MLS/bbw

PETITIONER'S EXHIBIT 15

STATE OF
WASHINGTON

Dixy Lee Ray
Governor

PUBLIC EMPLOYMENT RELATIONS COMMISSION
603 Evergreen Plaza,
Olympia, Washington 98504
206-753-3444

Marvin L. Schurke, Executive Director

March 3, 1978

Ms. Jerry Ard, President
Firstbank Independent
Employees Association
P.O. Box 187
Seattle, Washington 98111

Mr. Don J. Hofer, Director
Retail Clerks International Union
320 Vandveer Building
2819 First Avenue
Seattle, Washington 98121

Re: Firstbank Independent Employees Association
Case No. 1327-E-78-264

Gentlepersons:

We have had an inquiry as to whether my letter of February 28, 1978 overstates the number of FIEA members, and have re-examined our records in that regard.

The number "2,840" indicated in my letter of February 28, 1978 represents the sum of the numbers indicated on the eligibility list which we received from the FIEA's

mailing service (1472 + 1342) plus the 26 additional names on the supplemental eligibility list. We should not have trusted the pre-marked totals, as a hand-count of those eligibility lists indicates only 2598 names. The difference is picked up in blank and spacer positions on the mailing label strip, which were included in those pre-marked totals.

Please consider this as an amendment to my February 28, 1978 letter. The correct entry should be as follows:

NUMBER OF MEMBERS ON ELIGIBILITY LIST 2,624

I apologize for any inconveniences this may have caused you.

Very truly yours,

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

/s/ Marvin L. Schurke
MARVIN L. SCHURKE
Executive Director

MLS/bbw

PETITIONER'S EXHIBIT 17

Retail Clerks International Union

Doth Grant This Charter To

Jerry Ard, Kathleen E. Keene, Marnie Cassel, Walter Greene, Tami Klimke, Cynthia J. Batdorf, Edwin D. Winkey, Gladys J. Tellessen, Zoe E. McQuilkin, Karl Holzheimer, Zelda L. Prickett, Lucille M. Ward, Sharon M. Keyes, N. Jean Olson, Darlene G. Van Slyke, Lynda M. Garman, Sharon Ann Nelson, Leonard Williams, Dick A. Smith, Sharon L. Wilcox, Isabel Corn

and to their successors legally qualified to constitute the Local Union herein named and known under the title of the Financial Institution Employees of America, Local No. 1182 of the Retail Clerks Interantional Union for the purpose of a thorough organization of employees and other persons performing work or services in connection with, or related to banks, credit unions or other financial institutions in the city of Seattle and the entire state of Washington or any other jurisdiction as may be determined from time to time by the International Union.

The Local Union, being duly formed, is hereby empowered and authorized to initiate into its membership any person, or persons, in accordance with the Constitution and laws of the International Union and its own laws, and to conduct its affairs in compliance with the best interests of the membership. The autonomy of the Local Union is hereby ordained and secured, provided, that the said Local Union conforms to the Constitution and Laws of the Retail Clerks International Union. In default of any part, thereof, this Charter may be suspended or revoked according to the Constitution and laws of the International Union. Should the said Local Union forfeit this Charter, withdraw, be dissolved or expelled, then the persons to whom this Charter is granted, or their successors, bind themselves to surrender it, together with all such other

property, to the Retail Clerks International Union as required by the aforesaid Constitution and laws.

Wherefore, in consideration of the Local Union's full acceptance and due performance of the above, the Retail Clerks International Union does hereby bind itself to support said Local Union in the exercise of all its constitutional rights and privileges.

In Witness Whereof, we have subscribed our names and affixed the Seal of the International Union this 1st day of April A.D. 1978.

William H. Wynn, International President

Attest: Thomas G. Whaley, International Secretary-Treasurer

PETITIONER'S EXHIBIT 18

Management Memo

Information published for the management of
Seattle-First National Bank

January 9, 1978 (#42)

TO ALL SUPERVISORS, MANAGERS AND OFFICERS:

UNION OFFICIALS ANNOUNCE AFFILIATION INTENTIONS:

On January 9, officials of the union announced that they have agreed with Retail Clerks officials to affiliate the two unions, making Firstbank Independent Employees' Association (F.I.E.A.) a local of the Retail Clerks' International Union (R.C.I.U.). This affiliation will be subject to an election, the date of which is yet to be announced by the union.

Voting Eligibility Question

The unions have advised all bargaining unit staff by mail that only those who join FIEA by January 19 will have the opportunity to vote in this affiliation election. However, the National Labor Relations Board (N.L.R.B.) in Washington, D.C., has recently ruled that *all* staff members in bargaining unit jobs, regardless of whether they are dues paying members, have the right to vote on the matter of who represents them. This ruling specifically applies to affiliation elections. Thus FIEA's and RCIU's requirement of membership for the right to vote is not consistent with the Labor Board's ruling and seeks to exclude the majority of those affected by the election.

If asked for advice, you should neither encourage nor discourage staff members regarding joining the union for voting eligibility because (1) it is illegal under the

National Labor Relations Act for an employer to encourage or discourage membership in a union and (2) membership should make no difference as to eligibility for voting due to the recent NLRB ruling. In your response feel free to advise your staff members that Bank management is restricted by law from taking a position on membership, but that membership is irrelevant because the NLRB has ruled that non-members of a union have the same right to vote as members in an affiliation election.

First Bank's Reaction

First Bank management is opposed to affiliation. Affiliation is not in the best interest of our employees. Very soon, you will receive more information regarding First Bank's reasons for opposing affiliation.

If asked about the subject of affiliation and perhaps, how to vote, advise your staff members to weigh both sides of this issue carefully and that they will be supplied with First Bank's position so they will have full opportunity to consider the respective points of view.

BARGAINING PROGRESS REPORT:

The negotiations for a new contract continue with the next meeting scheduled for Thursday, January 12. The only issues which continue to be of significant discussion are Bank collection of union dues and confidential staff information reports to be submitted to the union on a regular basis. The Retail Clerks representative remains as the union's chief spokesman at the table.

If you or your staff have any questions regarding these developments, please call the Direct Line (206) 583-3406.

PETITIONER'S EXHIBIT 23(d)

RECORDED MESSAGE #97

The bank issued a management memo saying that all bargaining unit employees have the right to vote. We agree and all non-members have been sent a notice advising that they can vote by joining the union and paying dues before January 19. Contract the FIEA office at . . . if you have any questions. We want to be sure that all employees have an opportunity to get full information about the affiliation with the Retail Clerks International Union. Be sure to call us if you are unaware of a meeting in your area. Tuesday there is a meeting at 7:30 at the Sherwood Inn on 45th for north end employees and Wednesday a meeting will be held at the White Shutter Inn on Pacific Hiway South for south end employees.

EMPLOYER'S EXHIBIT 1

CONSTITUTION

Retail
Clerks
International
Union
1775 K Street N.W.
Washington, D.C. 20006

As amended and revised at the 27th Convention held at Honolulu, Hawaii, July 25-29 inclusive, 1977, including changes adopted by the International Executive Board pursuant to authority delegated by such convention.

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Retail
Clerks
International
Union

William H. Wynn
International President

Thomas G. Whaley
International Secretary-Treasurer

CONSTITUTION

As amended and revised
at the 27th Convention
held at Honolulu, Hawaii,
July 25-29 inclusive, 1977,
including
changes adopted by the
International Executive Board
pursuant to authority
delegated by such convention.

Affiliated with

American Federation of Labor and
Congress of Industrial Organizations

Canadian Labour Congress

Food and Beverage Trades
Department, AFL-CIO

Union Label and Service Trades
Department, AFL-CIO

Union Label Trades Department, Canada

Maritime Trades Department, AFL-CIO

Department of AFL-CIO Unions
for Professional Employees

International Federation of Commercial,
Clerical and Technical Employees
(Offices in Geneva)

Preamble

WHEREAS: The organization of workers into trade unions has been demonstrated to be, and is, essential to the economic, social, and political freedom of society and to the successful functioning of a democracy of, for, and by the people free from dictatorship, to the end that men and women shall live and work without discrimination or exploitation; and,

WHEREAS: The history of the workers in our jurisdiction throughout the world has been but the record of constant struggle against oppression; and,

WHEREAS: These troubles have arisen almost entirely from lack of unity and confidence in each other as workers, and misunderstanding the true causes of oppression; and,

WHEREAS: Unity guided by intelligence is a source of strength that can withstand all attacks, and that, without intelligent organization, we cannot acquire the discipline which enables ue to act together, concentrate our strength, and direct our efforts towards the desired end, and also acquire the patience which enables us to wait for the results; and,

WHEREAS: Under prevailing economic conditions, developed with the aid of the governmental authority for owners of property to organize in the corporate and other forms of ownership associations, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment; and,

WHEREAS: It is necessary that he have full freedom of association, self-organization, and designation of representation of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers or their agents in the designation of such representa-

tives, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

THEREFORE: For the purpose of promoting such unity and sentiment of action among the workers within our jurisdiction, and joining them closer together for mutual protection, we have organized the RETAIL CLERKS INTERNATIONAL UNION; and hereby adopt the following Constitution:

CONSTITUTION

of

Retail Clerks International Union

SECTION 1

Name and Headquarters

(A) This Union shall be known as the RETAIL CLERKS INTERNATIONAL UNION and shall consist of an unlimited number of Local Unions and members, all of which shall be subject to this Constitution and any laws enacted pursuant to it, and shall not be dissolved while there are three dissenting Local Unions.

(B) The Headquarters of the Retail Clerks International Union shall be located in the Metropolitan Washington, D.C. area unless otherwise determined by the International Executive Board

SECTION 2

Objectives and Principles

The objectives of this International Union shall be: To establish and conduct an International Union of persons engaged in the performance of work or services within its jurisdiction; to organize, establish, and charter bodies in all states and territories of the United States, Canada, and North America; to organize, unite, and assist persons, irrespective of race, creed, color, sex, or national origin, engaged in the performance of work or service within its jurisdiction for the purpose of improving wages, hours, benefits, and working conditions; to obtain the status of exclusive bargaining representative of persons employed within the jurisdiction of the International Union and to process and resolve grievances and enforce all other rights arising out of such collective bargaining relationships; to engage in educational, legislative, political, civic, social, welfare, community, and other activities; to advance and safeguard the full employment, economic security, and social wel-

fare of its members, and of workers generally; to protect and extend democratic institutions, civil rights and liberties, and the traditions of social and economic justice of the United States and Canada; to function as an autonomous International Union affiliated with other International Unions in national and international federations; to print and disseminate publications; to protect and preserve the International Union as an institution and to perform its legal and contractual obligations; to acquire, receive, hold, manage, lease, convey, invest, expend, or otherwise use the funds and property of this organization to carry out the duties and to achieve the objectives set forth in this International Constitution; to take all steps and actions, which are reasonable and proper, to promote the welfare and interests of its members, of workers within its jurisdiction, and of workers generally.

SECTION 3

Jurisdiction

The jurisdiction of the Retail Clerks International Union shall encompass but shall not be restricted to:

(A) Employees and other persons, including professionals, technicians, managers, supervisors, administrators, clerical, and ancillary personnel, both public and private, performing work or services in connection with or related to the sale, distribution, provision, or production of goods, merchandise, or services;

(B) Anyone performing any work or services incidental or related to work within the jurisdiction of the International Union, including work performed for the International Union or its chartered bodies, or who is otherwise performing work or services ruled by the International Executive Board to be within the jurisdiction of the Retail Clerks International Union.

SECTION 4

Membership Classifications

(A) All persons are eligible to membership in the Retail Clerks International Union whose membership is

not otherwise restricted or precluded by this Constitution or by other actions consistent with and authorized by this Constitution or International law, provided that no such restrictions or preclusions shall be based upon race, creed, color, sex, national origin, or age. Membership shall be in accordane with the following classifications, and no member shall hold more than one classification of membership at any one time: Active, nonactive, general, paid-up life, honorary, and associate. Suspended or expelled members, members on withdrawal, or any person who is not a member in accordance with the six classifications of membership provided for in this section, shall not be considered members for any purpose, except as may be directed pursuant to a remedial order of the International President or the International Executive Board following an appeal under this Constitution.

(B) An active member is a member who is employed within a collective bargaining unit represented by the International Union or any of its chartered bodies; who is employed by an employer who is the subject of an active organizing effort by the International Union or any of its chartered bodies; who is an employee or salaried officer of the International Union or any of its chartered bodies or of any organization approved by the International Executive Board with which the Retail Clerks International Union or any of its chartered bodies has affiliated; or who is a member of the International Union through a Local Union or a division of a Local Union, which was a professional or other association that has been chartered by or merged with the International Union or any of its chartered bodies; except that, at the request of a Local Union, the International President may extend the active membership of any member in that Local Union during a period of temporary unemployment, if the International President determines that exceptional circumstances warrant such extension.

(C) A Local Union may provide in its bylaws for the establishment of an associate membership for former

active members who are no longer eligible for active membership in the International Union.

(D) 1. Any Local Union may provide in its bylaws for the issuance of paid-up life membership in the Local Union to any of its members who have accumulated 15 or more years' active membership in the International Union and who are no longer eligible for active membership in the International Union.

2. Proposals to grant paid-up life memberships shall be introduced at a regular meeting of the membership and acted upon at the next regular meeting. Between the first and second meeting referred to herein, the President of the Local Union shall obtain verification from the International Secretary-Treasurer establishing the membership status of such member.

If paid-up life membership is approved for any member, the President of the Local Union shall immediately notify the International Secretary-Treasurer of such action. If such member again becomes eligible for active membership in the International Union, he or she shall deposit his or her paid-up life membership card in the same manner as provided for withdrawal cards in Section 6.

(E) A nonactive member. An owner-operator of an establishment within the jurisdiction of the International Union.

(F) 1. Any member who is no longer eligible for active membership in the International Union, who desires to maintain membership in the International Union, shall on or before the first day of the month following the date of issue of his or her withdrawal card deposit it at International Headquarters in order to become a general member. Any general member who again becomes eligible for active membership in the International Union shall deposit his or her general membership card with the Local Union within whose jurisdiction he or she is employed in the same manner as is provided for withdrawal cards in Section 6.

2. When a member applies for general membership, he or she shall be advised by the International Secretary-Treasurer, by certified mail, of his or her funeral benefits standing, if any, as of the time of application, subject to appeal to the International President.

3. General members shall pay to the International Union $2.00 per month dues, together with such assessments as may be levied by the International Executive Board, said dues to be payable on or before the first day of the month in advance. If dues and assessments are not so paid, such general member is delinquent. Any person becoming a general member on or after August 1, 1972, shall pay dues of $4.00 per month, as provided above.

(G) No person shall hold honorary membership in any Local Union of this International Union. The International Executive Board shall have exclusive authority to confer upon any individual honorary membership in the International Union in recognition of distinguished public service.

(H) All applications for membership in this International Union, by either new members, reinstated members, or those entering the Local Union on withdrawal cards, shall be made on forms furnished or approved by the International Union. Copies of such applications for membership shall be immediately forwarded to the International Secretary-Treasurer. No Local Union shall accept to membership any person who has been expelled from the Union.

(I) Members shall hold membership through the Local Union in whose jurisdiction they are working or last worked, except for members employed by the International Union or District Councils, who shall hold membership in such Local Union as may be determined by the International President. Where a member works within the jurisdiction of more than one Local Union, such member shall hold membership through the Local Union in whose jurisdiction such member first worked.

No member shall be permitted to hold membership in more than one Local Union of this International Union; provided, however, that nothing in this Constitution shall be construed to prohibit a Local Union from establishing a service fee for any person employed within its jurisdiction and working within a collective bargaining unit represented by it because such person is a member of the International Union through another Local Union in whose jurisdiction such member is also working.

(J) Employers, except for owner-operators, are not eligible for membership in the International Union; provided, however, that any member becoming an employer, other than an owner-operator, shall be entitled to a withdrawal card. Any member becoming an employer, other than an owner-operator, may become a general member by depositing such withdrawal card at International Headquarters on or before the first day of the month following the date of its issue as provided in Subsection 4(F).

(K) Any person who is a member of, or subscribes to, or supports the principles of a Communist or Fascist party or similar organization, having as its purpose to overthrow the government of the United States or of Canada, by force or violence, or to deny to citizens the guarantee of the Bill of Rights, or to throttle or eliminate a free trade labor movement, shall not be eligible for admission to membership in this International Union, nor shall such person hold membership therein. Any member charged as stated above shall be tried in accordance with the procedure set forth in this International Constitution and laws and if found guilty shall be forever barred from membership in this International Union. Any individual who has obtained membership by false statements as to the above shall be expelled after proper trial in accordance with the Constitution and laws of this International Union.

(L) Any member who is otherwise entitled to resign his or her membership while remaining employed within

the jurisdiction of the International Union must give 30 days' notice by certified mail to the Local Union in which he or she is a member before his or her resignation may become effective.

SECTION 5

Membership Rights and Privileges

(A) Active members shall enjoy all rights and privileges of membership in their respective Local Unions and in the International Union, including the right to vote at all regular and special meetings and to hold any office if otherwise qualified under their Local Union's bylaws and this Constitution.

(B) Associate and paid-up life members may be privileged to attend membership meetings and serve on committees as the Local Union President may determine. Such members may, at the request of the Local Union President, make reports or otherwise address such meetings. They shall have no voice or vote in union affairs, nor shall they hold union office.

(C) Nonactive, general and honorary members and nonmembers shall be allowed to attend and address union meetings at the discretion of the Local Union President. Such persons shall have no voice or vote in union affairs, nor shall they hold union office.

SECTION 6

Withdrawal and Military Leave Courtesy Cards

(A) The following members whose current dues and fees have been paid shall be entitled to withdrawal cards without charge therefor:

1. Members who become employers;
2. Members no longer employed within a collective bargaining unit represented by and within the jurisdiction of the Local Union;
3. Members whose positions are excluded from coverage by a collective bargaining agreement;

4. Members who are employed by the International Union or any of its chartered bodies who are represented by another labor organization for purposes of collective bargaining with the International Union or any of its chartered bodies; and

5. Members no longer employed by an employer who is the subject of an active organizing effort by the International Union or any of its chartered bodies and who is not a party to a collective bargaining agreement with the International Union or any of its chartered bodies.

(B) Withdrawal cards shall be dated as of the first of the month following the member's eligibility to receive such card.

(C) Persons holding withdrawal cards may maintain continuous membership:

1. By depositing the withdrawal card with the International Union no later than the first day of the month following the date of issuance, along with one month's dues, as provided in Section 4(F), with the International Union and becoming a general member as provided in Section 4(F), or

2. If eligible for active membership, by depositing the withdrawal card with the Local Union within whose jurisdiction he or she is employed or last held membership within one calendar month from the date of its issuance, together with the payment of the current dues.

(D) Any person possessing a withdrawal card and making application for membership in a Local Union shall be accepted as a reinstated member, without the payment of a fee, except the current dues, provided the card is deposited with the Local Union within whose jurisdiction such person is employed within 30 days from the date of employment within a collective bargaining unit represented by the International Union or such Local Union, or within 30 days from the date of employment by the International Union or any of its chartered bodies, unless a longer period of time is duly established

by such Local Union. Any person who is employed within a collective bargaining unit represented by the International Union or any of its chartered bodies and fails to deposit his or her withdrawal card as prescribed in this subsection shall have his or her withdrawal card declared void and shall not be reinstated to membership without the payment of the applicable reinstatement fee.

(E) In the event any member enters the military service of the United States or Canada, whether voluntarily or by draft, such member shall be entitled to, upon request, a military leave courtesy card with the privilege of depositing it with any Local Union within whose jurisdiction he or she is working, within six months after discharge from military service, provided such member's current dues and fees have been paid, and, further provided that, when such person resumes employment within a collective bargaining unit represented by and within the jurisdiction of the Local Union, he or she makes application for membership in the required manner, presents evidence of his or her discharge, and pays his or her current dues.

(F) During such military leave, the benefits as provided in this Constitution shall be inoperative; however, any such person readmitted under the above provisions shall immediately be restored to membership status in all respects as of the time of the issuance of the military leave courtesy card.

(G) Military leave courtesy cards presented for membership after the aforementioned six months' period shall be honored as regular withdrawal cards as set forth by this Constitution in Section 6(D).

(H) Recipients of withdrawal, military leave courtesy cards or holders of paid-up life or honorary membership cards receive such cards and privileges incident thereto in recognition of past membership or service or as a conferred honor. Continued possession of such cards and privileges incident thereto presumes that the holders of these cards will continue to uphold the aims, objectives,

and principles of the Retail Clerks International Union. Should any such person engage in any act which, if engaged in by a member, would constitute a disciplinary offense under Section 34 of this Constitution, the International Executive Board, after the issuance of a direction to show cause and consideration of any response from such person, may cancel or suspend any of the foregoing cards, memberships, or privileges.

SECTION 7

International Officers

The officers of this International Union shall consist of an International President, International Secretary-Treasurer, and 22 International Vice Presidents (except as provided in Section 8(A)(2), to be numerically designated for nomination and election purposes only; thereafter, to be listed in order of their seniority on the International Executive Board.

SECTION 8

International Executive Board

(A) 1. The International Executive Board shall have full power during the intervals between International Conventions to make such laws as may be needed in the interest and for the benefit of the International Union, which shall be published in the *Retail Clerks Advocate* and become effective the first of the month following such publication.

2. The International Executive Board, during the interim between the 27th and 28th regular Conventions of the International Union, shall be empowered from time to time to elect additional Vice Presidents as members of the International Executive Board. In no event, however, shall the total number of Vice Presidents exceed 34 in number. Such International Vice Presidents, when elected, shall hold office concurrently and on the same basis and tenure as incumbent International Vice Presidents; except that a minimum of nine International Vice Presidents shall not be in the primary employment of the

International Union, and except further that a minimum of one of the Vice Presidents not in the primary employment of the International Union shall be a resident of Canada and a member of a Local Union chartered by the Retail Clerks International Union situated in Canada.

3. The International Executive Board shall have the power to levy such assessments as it may deem necessary, and to authorize the payment of benefits, subject, however, to the limits set out in this Constitution and laws.

4. The International Executive Board shall employ a certified public accountant to perform a complete audit of the financial books and records of the International Union during the month of May of each year. Such certified public accountant shall be approved by the surety company furnishing the bond of the International President and International Secretary-Treasurer.

5. The International President shall be authorized to convene meetings of the International Executive Board whenever the International President deems it advisable or whenever requested by majority vote of the Board. In connection therewith, the International President shall fix the time and place of such meetings. The International President shall chair the International Executive Board meetings, provided that in his or her absence the International Secretary-Treasurer shall chair, and provided further that, in the absence of both the International President and the International Secretary-International Vice President then serving on the International Board of Trustees shall chair. The chairperson shall vote where that vote would be determinative of the outcome or in all cases where a secret ballot vote is conducted. A majority of the members of the International Executive Board shall constitute a quorum for the conduct of all business.

(B) The International Executive Board shall have power to authorize strikes or other economic action in conformity with the Constitution and laws of the Inter-

national Union, when necessary to defend the organization in any locality against the attacks of employers, combinations, lockouts, or any attempt to disrupt or destroy the organization; to support such actions by levying a per capita tax assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; to protect the property and interests of the International Union in such manner as it may deem helpful and beneficial, so long as it is not inconsistent with, and is within the meaning of this section; to make agreements with employers covering hours, wages, and conditions of employment.

Any authorization of strike action under this or any other section of the International Constitution in respect to any Local Union is contingent upon such Local Union disclosing all relevant facts relating to the proposed strike and the reasons and justifications therefor. Any authorization obtained without such full disclosure shall be considered not to have been given.

Authorization of any strike action by the International Union shall not operate to impose any liability on the International Union or its officers or to make them parties to any such action. The International Union does not assume any liability of any nature to any person or persons simply by reason of such authorization.

(C) The International Union shall pay the authorized expenses of the International Executive Board in connection with its meetings or other authorized work performed by it. Such expenses shall be paid for on a reimbursement and/or per diem basis, and, in addition, a stipend shall be paid to those International Vice Presidents not in the primary employment of the International Union.

(D) The International Executive Board shall have the authority to grant dispensation of the fee otherwise required by Section 18(A)1 for applicants for membership or reinstatement in cases where the Local Union has waived Local Union initiation or reinstatement fees dur-

ing active organizing programs and for applicants for membership or reinstatement in cases where the Local Union collects no initiation or reinstatement fee as a result of open shop conditions mandated by law or contract, provided that for such open shop situations any such dispensation shall not provide for a fee of less than the current applicable per capita tax as required by Section 18(A)4.

(E) The International Executive Board shall have authority to grant dispensation in the payment of initiation fees, union dues, or other financial obligations relating to membership in those jurisdictions operating under laws or regulations which require that membership in good standing be a condition precedent to the filing or processing of petitions for certification or representation or the legal equivalent thereof, and where the circumstances are such that the International Executive Board deems such action to be necessary; such dispensation, when granted, may include any part or portion of the financial obligations above referred to and shall be under such terms and conditions as the International Executive Board may stipulate.

(F) Recognizing that special problems may face chartered bodies in Canada which do not face other chartered bodies in the jurisdiction of the International Union, the International Executive Board shall be empowered to give special consideration to Canadian bodies, upon written request. Such special consideration shall not be inconsistent with the purposes of this Constitution.

(G) The International Executive Board may delegate any of its specific powers to the International President, to be exercised by him or her on its behalf between meetings of the International Executive Board.

(H) The International Executive Board by the vote of two-thirds of its members shall have the power to call a special Convention of the Retail Clerks International Union to consider such questions as the International Executive Board by the same vote shall certify to it. A

special Convention shall be convened by such procedures as a majority of the International Executive Board shall specify, which may include a specification that the delegates, but not votes, from each Local Union be reduced.

I) The International Executive Board shall have the power to authorize and effectuate the merger of any other labor organiaztion into the Retail Clerks International Union, where such merger can be effectuated without amendment to this Constitution. The International Executive Board may waive the application of any provision of this Constitution for a period not to exceed three years, where such waiver is necessary to properly effectuate the merger. Where the effectuation of a merger of the Retail Clerks International Union with another labor organization requires amendment to this Constitution, the International Executive Board may authorize the International President to enter into discussions directed toward merger. Approval of such a merger shall be submitted by the International Executive Board to a regular Convention or to a special Convention called by it for the purpose of considering the proposed merger.

(J) The International Executive Board shall have the power to authorize the merger of Local Unions of the Retail Clerks International Union or of an organization not chartered by the Retail Clerks International Union into a Local Union of the Retail Clerks International Union. The International Executive Board shall prescribe the conditions under which any such merger shall be effectuated.

(K) If any provision of this Constitution shall be declared or shall otherwise become invalid or impaired by virtue of any Federal, State, or Provincial legislative enactment, or by virtue of any decision or regulation of any Federal, State, or Provincial court or administrative agency, the International Executive Board shall have the authority to suspend the operation of any such provision during the period of its invalidity or impairment and shall also have the authority to substitute a provision

or provisions which, to the extent permitted by law, will meet the objections and which will be in accord with the intent and spirit of the invalid provision. The International Executive Board shall give written notice of all Local Unions and all District Councils after exercising this power. If any provision of this Constitution should be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution shall not be affected thereby.

SECTION 9

International President

(A) The International President shall be the chief executive officer of the International Union and shall exercise supervision over the affairs of the International Union.

(B) It shall be the duty of the International President to preside at all Conventions, appoint all committees, unless otherwise ordered by the Convention, and sign all charters and other official documents of the International Union.

(C) The International President shall manage, conduct, and edit the *Retail Clerks Advocate* and any other publications of the International Union.

(D) The International President shall have the authority to manage and control all funds and property of the International Union, except as otherwise provided in Section 12 of this Constitution. He or she shall have the authority, between meetings of the International Executive Board, to direct and approve the expenditure of the funds of the International Union as shall be necessary or advisable in carrying out the principles and objectives of the International Union, and for any additional purposes and objectives not inconsistent therewith which will further the general interest and welfare of the International Union. Such expenditures shall be made by check cosigned by the International President and the International Secretary-Treasurer, provided that, in the event of a vacancy in either of such offices, the survivor and

third Trustee shall cosign checks until the vacancy is filled. He or she shall have the authority to invest the surplus funds of the International Union where he or she deems it advisable, subject to the approval of the Board of Trustees. He or she shall be further empowered to do all acts, whether or not expressly authorized in this Constitution, which he or she deems necessary or proper for the protection of the funds or property of the International Union, subject to the approval of the Board of Trustees. No expenditure of International Union funds shall be made except upon authorization of the International President, except as otherwise provided in this Constitution.

(E) The International President shall have the authority to interpret the Constitution and laws of the International Union and to decide all questions relating thereto; to resolve any dispute between chartered bodies or members thereof, or between chartered bodies and the International Union, for which a remedy is not otherwise provided in this Constitution or in the bylaws of the respective chartered bodies; subject to an appeal to the International Executive Board.

(F) The International President shall commission active members as International Representatives. Such International Representatives shall assist the International President in the carrying out of the duties and responsibilities of his or her office and shall work under his or her supervision. The International President shall fix their compensation and other conditions of service. Any aggrieved International Representative may appeal to the International President and, if he or she remains aggrieved, to the International Executive Board, provided that there is no other grievance procedure authorized by the International Union.

(G) The International President shall employ and fix the compensation and other terms of employment of assistants, professional and other personnel that he or she deems advisable for the purpose of carrying out the

duties of his or her office and to effectively administer the affairs of the International Union. Such personnel shall work under the supervision of the International President. He or she shall have the authority to terminate the employment of any such personnel in the best interest of the International Union.

(H) The International President may assign representatives to assist Local Unions.

(I) The bond of the International President shall be in such amonut as the International Executive Board shall deem sufficient to fully protect the International Union and shall be furnished by a surety company approved by the International Executive Board, the premium thereof to be paid by the International Union.

(J) The International President, or his or her designated representative, is hereby authorized, by virtue of his or her office, to attend as an official delegate to the International Union all meetings, conferences, or conventions that may be held where the International Union is entitled to representation or where the best interest of the International Union may be served by his or her presence, and he or she is further authorized to appoint such additional delegates as the International Union may be entitled to send to such meetings, conferences, or conventions.

(K) 1. A trusteeship may be imposed by the International Union upon a chartered body to correct corruption or financial malpractice; assure the performance of collective bargaining agreements or other duties of a bargaining representative; restore democratic procedures; or otherwise carry out the legitimate objectives of the International Union, including the enforcement of compliance with Federal, State, or Provincial law, the Constitution or laws of the International Union, or the approved bylaws of the chartered body. Whenever in the judgment of the International President such action is required, he or she shall have the power to place such chartered body in temporary trusteeship or take such

other temporary action as he or she deems necessary. If a temporary trusteeship is imposed, the International President shall appoint a trustee, who shall administer the affairs of the chartered body during trusteeship. Within 30 days following the imposition of a temporary trusteeship, a hearing shall commence to determine whether the trusteeship is justified and shall be continued.

2. a) The trustee shall act under the supervision of the International President, who may remove him or her at any time and appoint a successor.

b) The trustee shall take immediate charge of the affairs of the chartered body and shall have the right, upon demand, to all assets and records for the period that he or she is in charge, to be held in trust for the benefit of the members of the chartered body. During the trusteeship the assets of the chartered body shall be expended for the conduct of its affiairs and the operation of the trusteeship. The trustee shall be bonded in sufficient amount as determined by the International President to safeguard the assets of the chartered body.

c) When a trusteeship is imposed, the functions of the officers of the chartered body shall be suspended and their functions shall pass to the trustee, who may delegate such functions to interim officers. If the International President determines after hearing that the trusteeship is justified, and thereby ratifies the trusteeship, all offices within the chartered body shall immediately become vacant. The trustee may then appoint acting officers, all of whom shall serve under his or her direction. He or she may remove them at any time and appoint successors. If the International President determines that the trusteeship was not justified, or should not continue, the suspended officers shall be restored to their prior offices without loss of salary or benefits, unless otherwise determined in accordance with the procedures set forth in this Constitution.

d) After the trusteeship has been ratified, the trustee shall have authority to bring disciplinary proceedings, including the filing of charges, against any former officer or member of the chartered body who he or she has reasonable grounds to believe has contributed to the conditions leading to the establishment of the trusteeship. In any such disciplinary proceeding, the accused shall be tried before a representative appointed by the International President. Trial proceedings shall be in accordance with the applicable provisions of Section 35(A). The representative appointed to conduct the trial shall, upon its completion, submit findings and recommendations to the International President with the trial record. The International President is thereupon authorized to take such disciplinary measures as the circumstances warrant including fine, suspension, or expulsion. Appeals from the decision of the International President may be taken to the International Executive Board in accordance with the applicable provisions of Section 35(C).

e) The autonomy of the chartered body shall be suspended during the period of the trusteeship, except that membership votes shall be held where required under Sections 30 and 32.

f) The trustee shall make periodic reports to the International President on the progress of the trusteeship. He shall also hold meetings of the membership not less than quarterly for the purpose of reporting to the membership on the affairs and transactions of the chartered body.

3. a) The temporary trusteeship hearing shall be conducted by a hearing officer appointed by the International President.

b) Adequate notice of the time, place, and subject of the hearing shall be sent by the International President to the members of the chartered body.

c) The chartered body shall be represented by its officers, who, subject to rules formulated by the hearing officer to prevent undue repetition, shall have the right to

examine and cross-examine witnesses, present other evidence, and argue the case for or against trusteeship.

d) Members shall have a right to testify, subject to rules formulated by the hearing officer to prevent undue repetition. If a member alleges that the officers of the chartered body cannot adequately represent his or her interests, the hearing officer may determine, upon a sufficient showing, to permit the member to participate in the examination and cross-examination of witnesses, the presentation of other evidence, and the argument.

e) Any officer or employee of the chartered body who refuses to produce any document relevant to the hearing shall be subject to immediate suspension from office or employment by the International President pending proceedings under Section 9(L).

f) The hearing officer may formulate whatever additional rules may be required to ensure a full, fair, and expeditious hearing.

g) All testimony shall be taken under oath, and a verbatim transcript shall be made of the hearing.

h) The hearing officer shall submit his or her findings and recommendations to the International President with the hearing transcript and exhibits.

i) Within 30 days from the date the hearing closes, the International President shall issue his or her decision and order, which shall include his or her findings and determinations. Such decision and order shall be sent to the members of the chartered body.

j) The International President shall make available for examination by the members of the chartered body, at the office of the chartered body, a copy of the hearing officer's finding and recommendations, the hearing transcript, and the hearing exhibits.

4. a) A decision and order of the International President to continue a trusteeship may be appealed to the International Executive Board in accordance with the applicable provisions of Section 35.

b) A decision and order of the International President determining that a trusteeship is justified shall constitute ratification of the trusteeship by the International Union unless reversed on appeal.

5. a) The trusteeship shall continue for such period as the International President shall consider necessary for the reorganization or stabilization of the affairs of the chartered body to achieve the purposes of the trusteeship; provided, however, that the body in trusteeship shall have the right to petition for removal of the trusteeship at intervals of not less than six months following the establishment of the trusteeship. Any such petition must first be duly signed by a majority of the active members of the chartered body and then filed with the International President.

b) Upon receipt of such petition, the International President shall at the earliest practicable time hold an inquiry to determine whether the trusteeship shall continue. The inquiry shall be conducted by a representative appointed by the International President, under rules formulated to ensure a full, fair, and expeditious inquiry. Due notice of the time and place of the inquiry shall be given to the members of the chartered body.

c) The representative holdings the inquiry, at its conclusion, shall submit findings and recommendations to the International President. The decision of the International President shall include his or her findings and recommendations, and shall be sent to the members of the chartered body.

d) The decision of the International President may be appealed to the International Executive Board by any member of the chartered body in accordance with the applicable provisions of Section 35.

6. Prior to the conclusion of the trusteeship, the trustee shall review the bylaws of the chartered body and shall submit his or her recommendations for amendment to the membership in accordance with the provisions for amendment contained in the bylaws. Prior to the con-

clusion of the trusteeship, the trustee shall conduct new elections for all offices of the chartered body in accordance with the Constitution of the International Union and the bylaws of the chartered body.

7. When the trusteeship is terminated upon order of the International President, the trustee shall return all assets and records to the chartered body and shall make an accounting of his or her trusteeship to the International President and the chartered body.

8. No obligation or liability of a chartered body which may have been incurred prior to the imposition of a trusteeship by the International President shall be assumed by or become an obligation of the International Union. No obligation or liability of a chartered body which has been placed in trusteeship, including obligations under existing collective bargaining agreements incurred subsequent to the institution of such trusteeship, shall become an obligation of the Retail Clerks International Union, unless specifically authorized or assumed by the International Executive Board.

(L) Whenever the activities of any member or officer of a chartered body involve, in the judgment of the International President, a situation imminently dangerous to the welfare or best interests of the International Union or a chartered body, the International President is authorized to assume original jurisdiction in such matter, even though charges may have been filed with another body and are pending. Under such circumstances, the International President may immediately suspend the person from membership or office, but he or she shall be required to accord such member or officer a hearing, upon notice of the charges against him or her, which hearing shall commence within 30 days of such suspension. The International President shall have authority to appoint a temporary successor to any officer thus suspended, to serve until the charges are disposed of. Such hearing may be conducted by a representative appointed by the International President. Following such hearing the In-

ternational President is authorized to take such disciplinary action as the circumstances warrant, including fine, suspension, expulsion, or removal from office. Appeal from the decision of the International President may be taken to the International Executive Board. Procedure on appeals shall be governed by the applicable provisions of Section 35.

(M) Whenever, in the judgment of the International President, a chartered body or the members thereof are working against the best interests of the International Union or are not in harmony with the Constitution and laws of the International Union, the International President shall have the power to order said body or the members thereof to cease such activities under penalty of suspension, subject to the approval of the International Executive Board.

(N) The International President shall receive in monthly installments an annual salary to be determined by the International Executive Board, which shall not be less than the annual salary in effect in January 1968. He or she shall also receive an allowance for expenses incident to the conduct of his or her office. Salary determinations by the International Executive Board once made shall constitute the new minimum.

SECTION 10

International Vice Presidents

It shall be the duty of the International Vice Presidents to render such assistance to the International President as he or she may require and to perform such other work under his or her direction as he or she may request and to render regular reports on the progress of organizational work assigned to them and with respect to any other duties or functions which they have been directed to perform.

SECTION 11

International Secretary-Treasurer

(A) The International Secretary-Treasurer shall have custody of all books, papers, funds, assets, property, and

effects of the International Union. He or she shall conduct all correspondence pertaining to his or her office. He or she shall keep accurate account between the Local Unions and the International Union, and shall prepare monthly reports, which shall be furnished the President of each Local Union, showing from what source the finances have been received, and for what purpose disbursed.

(B) The International Secretary-Treasurer shall furnish, at the expense of the International Union, all report forms, application forms, and material for the transaction of business between the International Union and the Local Unions. No chartered body shall use any forms for the transaction of such business except those furnished or approved by the International Secretary-Treasurer. The International Union shall pay all duties on supplies shipped outside the borders of the United States.

(C) The International Secretary-Treasurer shall collect all moneys due the International Union and shall deposit all funds in a responsible bank in the name of the Retail Clerks International Union. The book of deposit shall be balanced monthly, and he or she shall furnish a statement of such balance, together with an itemized account of all receipts and disbursements of the International Union for the previous month, to the International President and to each member of the International Executive Board. Only expenditures and bills approved by the International President shall be paid from the funds of the International Union and shall be paid by check.

(D) All income received from interest, rents, lease, or sale of any property of the International Union or any part thereof, shall be received by the International Secretary-Treasurer as provided for in the Constitution and laws of this International Union, and shall become a part of the general fund of the International Union. An accounting of all such receipts and expenses shall be published in the regular monthly financial statement sub-

mitted by the International Secretary-Treasurer to the Local Unions.

(E) Negotiable bonds and other securities shall be placed in safekeeping with a responsible depository in the name of the Retail Clerks International Union. Access to such safe deposit box shall be obtained only on the signature of the International President, the International Secretary-Treasurer, or the third Trustee.

(F) The International Secretary-Treasurer shall promptly notify the International Executive Board of the results of the votes cast on all propositions submitted to them.

(G) The International Secretary-Treasurer shall issue charters upon the approval of the International President. He or she shall, upon the application for and approve of a charter for a new Local Union, accompanied by the fees as prescribed in Section 23(A), issue the same as speedily as possible, duly sealed and signed by the International President and International Secretary-Treasurer.

(H) The International Secretary-Treasurer shall have the International Union name, emblem, and Store Card or other indicia of union shop identification registered in each state.

(I) The International Secretary-Treasurer shall submit a complete report of his or her work to each regular Convention and close all accounts on the first day of May preceding each regular Convention. He or she shall make out a report of the number of members for each month and forward same with per capita tax, to bodies with which the International Union is affiliated.

(J) The International Secretary-Treasurer shall be furnished with a seal, which seal shall be fixed to all official and important documents, and shall deliver to his or her successor in office all property and funds, assets and effects in his or her possession belonging to the International Union.

(K) The bond of the International Secretary-Treasurer shall be of such amount as the International Executive Board shall deem safe to fully protect the International Union and shall be furnished by a surety company approved by the International Executive Board, the premium thereof to be paid by the International Union.

(L) Constitutions and annual membership identification cards shall be furnished Local Unions by the International Secretary-Treasurer at the expense of the International Union in such number as may be required, and it shall be the duty of the Local Union President to issue such membership identification card to each member of the Local Union.

All members of the Local Union shall be issued such card at the commencement of each calendar year and new and reinstated members shall be issued such card at time of affiliation.

(M) The International Secretary-Treasurer shall provide for the bonding of such International Union, Local Union and District Council officers, representatives, and employees, as the International Secretary-Treasurer deems advisable, with a surety company approved by the International Executive Board. Each such officer, representative, or employee shall be bonded by said company in an amount adequate to protect the Local Union from loss, the amount of such bond, however, to be not less than $2,500.00 or the amount required by applicable law. Such bond shall run to the International Union. The cost of such bond shall be borne by the chartered body involved or the International Union, as applicable. Any Local Union or District Council failing to comply with this section within 30 days shall be subject to discipline.

(N) The International Secretary-Treasurer shall have the authority, without notice, to obtain or make a routine audit, inspection, or examination of all books and records of Local Unions or other chartered bodies. He or she shall exercise the foregoing authority through the appointment of authorized representatives or through the

employment of necessary personnel, with the approval of the International President.

(O) The International Secretary-Treasurer shall receive in monthly installments of an annual salary to be determined by the International Executive Board, which shall not be less than the annual salary in effect in January 1968. He or she shall also receive an allowance for expenses incident to the conduct of his or her office. Salary determinations by the International Executive Board once made shall constitute the new minimum.

(P) The International Secretary-Treasurer shall conduct his or her office under the general supervision of the International President and shall perform such other duties and responsibilities in aid of the International President as may be delegated to him or her by the International President.

SECTION 12

International Board of Trustees

(A) The International President, International Secretary-Treasurer, and an International Vice President to be elected annually by the International Executive Board shall, by virtue of their offices, constitute a Board of Trustees. The Board of Trustees shall elect a chairperson and secretary from among its members and shall keep a record of its meetings.

(B) The Board of Trustees shall purchase, manage, and control all real property of the International Union, and may sell, rent, lease, encumber, and improve the same in such manner as the majority of the Board of Trustees shall direct, but shall have no right to sell, convey, or encumber the current or a successor International Headquarters without the approval of the International Executive Board.

(C) The title to the International Headquarters and other real property currently held by the International Union, or which may hereafter be acquired, shall be vested by proper conveyance in the Board of Trustees and their

successors in office, to be held by the Board of Trustees in trust for the sole use and benefit of this International Union.

(D) Should a vacancy occur in the Board of Trustees, then such vacancy shall be filled as provided in this Constitution. The person chosen to fill such vacancy shall succeed to all authority of the member he or she is chosen to succeed.

(E) The Board of Trustees shall make a report to each regular Convention of all business transacted in connection with the Headquarters and other real property of the International Union.

(F) No member of the Board of Trustees shall receive any additional compensation by virtue of his or her services in connection with the management and control of International Headquarters or other real property of the International Union.

SECTION 13

International Board of Audit

Three International Vice Presidents elected annually by the International Executive Board, who are not on the Board of Trustees, shall constitute a Board of Audit. The Board of Audit shall meet at the office of the International Secretary-Treasurer during the month of May or June of each year for the purpose of reviewing the report of the certified public accountant retained by the International Executive Board to audit the financial books and records of the International Union. The report of the certified public accountant and the report of the Board of Audit, which shall be certified and sworn to, shall be furnished each Local Union and be published in the *Advocate*.

SECTION 14

Regular International Conventions

(A) The Retail Clerks International Union shall meet in regular Convention every five years, not later than

August of the convention year, to elect the officers of the International Union and to transact such other business as may come before the Convention. The date and place of the regular Convention shall be determined by the International Executive Board and the Executive Board shall make the necessary arrangements for holding such Convention.

(B) The International President shall instruct the International Secretary-Treasurer to issue a Convention call to each Local Union not less than six months prior to the month of each regular Convention. Such call shall state the time, date, and place of the Convention.

SECTION 15

Regular International Convention Delegates

(A) At the time the Convention call is issued, the International Secretary-Treasurer shall inform each Local Union of the number of delegates to which it is entitled and shall furnish each Local Union Secretary-Treasury with credential forms in duplicate, for delegates and alternates. The Local Union's Secretary-Treasurer shall mail the completed original credentials to the International Secretary-Treasurer immediately after the Local Union elects its delegates and alternates. Credentials must be received by the International Secretary-Treasurer 60 days prior to the convening of the Convention. The completed duplicate credentials shall be retained by the delegates and alternates and presented to the Credentials Committee immediately prior to the convening of the Convention. Each credential must be signed by the Local Union President and Secretary-Treasurer.

(B) Effective January 1, 1978, Local Unions shall be apportioned Convention delegates and votes in accordance with the following formula:

Number of Members in Local Union	Number of Delegates and Votes
1- 500	1
501- 1,000	2
1,001- 1,500	3
1,501- 2,000	4
2,001- 2,500	5
2,501- 3,000	6
3,001- 3,500	7
3,501- 4,000	8
4,001- 4,500	9
4,501- 5,000	10
5,001- 5,500	11
5,501- 6,000	12
6,001- 6,500	13
6,501- 7,000	14
7,001- 7,500	15
7,501- 8,000	16
8,001- 8,500	17
8,501- 9,000	18
9,001- 9,500	19
9,501-10,000	20
10,001-10,500	21
10,501-11,000	22
11,001-11,500	23
11,501-12,000	24
12,001-12,500	25
12,501-13,000	26
13,001-13,500	27
13,501-14,000	28
14,001-14,500	29
14,501-15,000	30
15,001-16,000	31
16,001-18,000	32
18,001-20,000	33
20,001-23,000	34
23,001- up	35

(C) The number of delegates apportioned to a Local Union shall be determined by the International Secretary-Treasurer upon the basis of its average monthly member-

ship for the 12 calendar months ending with the second month preceding the month in which the Convention call is issued. Each Local Union may elect a number of alternates up to the number of delegates to which it is entitled, in accordance with the procedures for the election of delegates.

(D) If a delegate is unable to be seated for any reason or is absent for good cause, the alternate elected by the greatest number of votes, or in the case of a tie the alternate chosen by a vote of that Local Union's seated delegates, shall succeed to the vacancy for the period of such delegate's absence from the Convention. An alternate succeeding to a vacancy shall have neither voice nor vote until recognized by the Credentials Committee.

(E) Each Local Union President shall be a delegate to International Conventions by virtue of election to office, except where a Local Union is entitled to or elects to send only one delegate to a special Convention, such delegate shall be elected by secret ballot. The remaining delegates and alternates to which a Local Union is entitled shall be nominated and elected by secret ballot in accordance with the procedures for the nomination and election of Local Union officers as provided in Section 27 of this Constitution, except as provided in this subsection. Where an election of delegates or alternates is to be conducted, nominations for all delegates and nominations for all alternates shall precede the conduct of the elections. No member shall be nominated as both a delegate and an alternate. Each active member voting shall be entitled to cast a number of votes for delegates and alternates up to the number of delegates and alternates to which the Local Union is entitled or chooses to elect, but in no event may a member cast more than one vote for any nominee. Such delegates and alternates shall be elected by plurality vote in descending order of the votes received, starting with the nominee receiving the highest number, up to the number of delegates and alternates to which the Local Union is entitled or chooses to elect, whichever is the lesser. In

the event of a tie that affects the outcome, there shall be a run-off election among the tied nominees.

(F) The nomination and election of delegates to the Convention shall be conducted at any time during the three months following the month in which the Convention call is issued. The election of delegates to the Convention shall be conducted by secret ballot. Not less than 15 days prior to the nomination of delegates, notice shall be mailed by the Local Union to each member at his or her last known home address, setting forth the times, places, and manner for conducting the nomination and election of delegates to the Convention.

(G) Any active member of the Retail Clerks International Union, as defined in Sections 4(B) and 5(A) of this Constitution, shall be eligible to vote for Local Union delegates to the Convention, in the Local Union through which he or she holds his or her membership.

(H) 1. Any active member of the Retail Clerks International Union, as defined in Section 4(B) and 5(A) of this Constitution, who has been an active member of the Retail Clerks International Union, or who had been a member of another organization merged with or chartered by the Retail Clerks International Union, for a continuous aggregate of at least one year preceding January 1 of the year in which the Convention is scheduled, shall be eligible to be a delegate to the Convention from the Local Union through which he or she holds his or her membership.

2. Nothing herein contained shall be so construed as to disqualify any member who accepts a salaried position with the American Federation of Labor and Congress of Industrial Organizations, the Canadian Labour Congress, the International Union, or any of its chartered bodies or to disqualify the delegates or delegates of a Local Union reorganized within a period of less than one year. A Local Union not in possession of a charter from the Retail Clerks International Union at the time the Convention call is issued shall not be entitled to rep-

resentation in the Convention of the International Union.

(I) The nomination and election of delegates shall be conducted in the same manner as the nomination and election of Local Union officers, as provided in Section 27 of the International Constitution.

(J) 1. Not more than 15 days subsequent to the election of delegates in a Local Union, all challenges to the election of such delegates shall be submitted to the Local Union general election chairperson. Not more than 15 days subsequent to the decision of the Local Union general election chairperson and judges respecting such challenge, a challenging party may submit an appeal to the International President. When a Local Union fails to rule on such challenge within 30 days of the Local Union election of delegates, a challenging party may submit an appeal to the International President not later than 15 days thereafter. Any challenge or appeal which could have been presented to the Local Union or International President in compliance with these filing requirements, but was not, shall be deemed to have been waived.

2. The International President shall refer such appeals to the Credentials Committee which shall consist of not less than five noncontested delegates, who shall be appointed by him or her not less than 20 days prior to the convening of the Convention. This committee shall meet prior to the convening of the Convention at the call of the International President to consider and resolve all appeals. This committee shall also independently review the credentials of all delegates and shall resolve all questions of irregularity. The committee shall report its ruling on appeals and irregularities to the Convention on the first day thereof. It may meet during the Convention at the call of the International President. The rulings of the committee shall be in force pending review by the Convention.

(K) The ballots and all other records pertaining to the nomination and election of delegates, including the membership mailing lists which were used to send the notices

of the nomination and election of delegates, shall be preserved for not less than one year by the Local Union Secreary-Treasurer.

(L) A Local Union may elect fewer than its quota of delegates, provided that such determination be made prior to or at the nominating meeting. The number of votes to which a Local Union is entitled at Convention on all recorded votes shall be divided equally among the seated delegates present.

(M) A Local Union shall not instruct its delegates in regard to the nomination and election of International officers, or in regard to any other matter coming before the Convention.

(N) In the case of a Local Union entitled to two or more delegates, they shall choose a chairperson and alternate chairperson of the delegation.

(O) Local Unions may pay all or a portion of their delegates' transportation and other authorized expenses connected with attendance at the Convention. Where a Local Union pays for the transportation and other expenses of one of its delegates, it shall pay for the transportation and other expenses of all of its delegates.

(P) Delegates of Local Unions which are suspended or whose fees and monthly per capita tax have not been received at International Headquarters by the tenth day of the third month following that for which they are due shall not be seated at the Convention.

(Q) The officers of the International Union shall be delegates to the Convention and shall attend at the expense of the International Union.

SECTION 16

Regular International
Convention Procedure

(A) The proceedings of the regular Convention shall be governed by this Constitution and the rules adopted at each Convention. The rules adopted at the preceding regular Convention shall be in full force from the open-

ing of any such Convention until new rules are adopted. Each Convention may adopt rules for the conduct of its business not in conflict with the provisions of this Constitution. The Convention shall be conducted in accordance with common parliamentary procedure designed for the conduct of orderly and democratic meetings, unless otherwise provided by this Constitution or by the Convention rules.

(B) 1. It shall be the duty of the International President to preside at the Convention and conduct it in accordance with this Constitution and Convention rules. He or she shall submit to the regular Convention a report of his or her work as International President. In the absence of the International President, the International Secretary-Treasurer shall preside.

2. The International President shall appoint all Convention committees and they shall meet at his or her call. Each committee shall consist of not less than five Local Union delegates. The International Union may pay transportation and other expenses connected with service on committees which meet prior to the Convention.

(C) The International Secretary-Treasurer shall act as Secretary of the Convention. He or she shall keep a record of the proceedings of the Convention and shall submit a report to each regular Convention, including a showing of total receipts and expenses for the period since the last regular Convention. He or she shall publish full proceedings of each Convention in convenient form and furnish one copy to each delegate to the Convention and one copy to each chartered Local Union and to members of the International Executive Board.

(D) The International Executive Board shall make a report to the regular Convention, and its members shall perform such duties for the International President during Convention as he or she may require.

(E) 1. Not less than 60 days prior to the convening of the Convention, all amendments to the International Constitution proposed by Local Unions shall be submitted

to the International President, and he or she shall refer such proposed amendments to a Constitution Committee of not less than five noncontested delegates, who shall be appointed by him or her not less than 20 days prior to the convening of the Convention.

2. This committee shall meet prior to the convening of the Convention, at the call of the International President, to consider all amendments proposed by Local Unions. Proposed amendments originating with the International Executive Board may be submitted to the Constitution Committee for its consideration or submitted directly to the Convention. The Constitution Committee shall report its recommendations respecting any proposed amendments referred to it to the Convention.

(F) Immediately after the opening of each Convention, on the first day, the International President shall appoint the required number of Reading Clerks, Sergeant-at-Arms, and Messengers.

(G) An International Convention quorum shall consist of not less than 25 percent of the delegates officially seated by the Convention.

(H) The International Secretary-Treasurer shall prepare, for the use of the Convention, a list containing the number of votes to which each Local Union is entitled. When a roll call vote is conducted, the International Secretary-Treasurer shall, in calling the roll of the Local Unions, call out the Local Union's number and the number of votes to which it is entitled.

(I) Voting shall be by a voice or standing vote of the delegates. Roll call votes shall be conducted in accordance with the provisions of Section 17(H) and (I) of this Constitution.

SECTION 17

Election of International Officers

(A) 1. Only active members of the Retail Clerks International Union, who have been active members of the Retail Clerks International Union, or who were members

of another organization merged with or chartered by the Retail Clerks International Union, continuously for at least three years immediately preceding January 1 of the year in which the election is held, are eligible to hold any office of the International Union.

2. Any International, Local Union, or District Council officer or employee accepting any political office, or other employment or position, which in the judgment of the International Executive Board is inconsistent with the welfare of the Union, or which interferes with the proper carrying out of duties or responsibilities as a Union officer or employee, shall not be eligible to serve as an officer of the International Union or any of its chartered bodies, or represented any chartered body in a District Council or International Convention, or in a Central, State, National, or Provincial Labour Body Convention, and any such officer or employee shall resign his or her office or position with the Union immediately, unless a leave of absence is granted, with the approval of the International Executive Board. Upon failure to resign as required herein, the International Executive Board shall declare such office or position vacant and a successor shall be elected or appointed in accordance with the provision of this Constitution.

3. Nothing contained in this Constitution shall be construed as making any member ineligible to serve as an officer or delegate by virtue of such member's holding a salaried position with the Retail Clerks International Union or any of its chartered bodies, or any organization approved by the International Executive Board with which the Retail Clerks International Union or any of its chartered bodies has affiliated.

(B) The term of office for all International officers shall be five years and shall begin November 1 following their election, except in the case of a special election to fill a vacancy, in which case the term of office shall commence upon election by the International Executive

Board, and shall continue for the balance of the predecessor's original term.

(C) The election of International officers shall be conducted at the regular Convention. Nominations shall be held on the second day of the Convention. The election of officers shall take place as the next order of Convention business.

(D) Nomination to International office shall be from the floor of the Convention. It shall require at least 15 Local Unions to place a name in nomination. In making nominations, Local Union action shall be determined by a majority vote of the delegates of the Local Union and shall be announced by the chairperson of the delegation or such other spokesperson as may be designated by a majority of the delegates. Any delegate may request the presiding officer to conduct a roll call of the delegates of the Local Union which he or she represents to verify the Local Union action. The presiding officer may also order a roll call if he or she is in doubt that a majority of the delegates support the Local Union action. No Local Union may nominate more than one candidate for each office.

(E) Following the nominations, the nominees shall be required to indicate their acceptance of the nomination. No member shall be eligible for nomination to more than one International office, and no member who declines to accept nomination for an office shall be eligible for election to that office.

(F) There shall be a Committee on Elections which shall be composed of the International Secretary-Treasurer and not less than five Local Union delegates appointed by the International President. The Committee on Elections shall report on the eligibility of the nominees to the Convention prior to the election.

(G) Where there is only one nominee for an office, the presiding officer may entertain a motion to declare the unopposed candidate elected by acclamation.

(H) Election of International officers shall be by standing vote of the delegates, except that a roll call vote of the Local Unions shall be conducted upon a motion of a delegate, concurred in by 30 percent of the seated delegates, or by the presiding officer if he or she is in doubt as to the vote. When a roll call vote is conducted, the chairperson of each Local Union delegation shall announce the votes of the delegates of that Local Union. Any delegate may request the presiding officer to conduct a roll call of the delegates of the Local Union which he or she represents. The presiding officer may also order a roll call if he or she is in doubt as to the Local Union vote.

(I) The presiding officer shall appoint not less than two judges to assist the International Secretary-Treasurer in the conduct and count of roll call votes. Each candidate may be present or be represented by a delegate to observe the count.

(J) In the event a roll call vote becomes necessary during the election of the International Secretary-Treasurer, the roll call shall be conducted by a delegate appointed by the presiding officer. The International Secretary-Treasurer shall not participate in such roll call.

(K) A majority of the votes cast for any office shall be required to elect. If no candidate receives a majority, a run-off election shall be conducted. Such run-off election shall present to the delegates only the names of the two nominees receiving the greatest number of votes.

(L) No funds of the International Union or any of its chartered bodies shall be used to promote the candidacy of any person for any elective office or position within the International Union.

(M) No publications sponsored by or supported by the International Union or any chartered body shall be used to promote the candidacy of any person for elective office or position within the International Union.

(N) All Convention minutes and other records pertaining to the election of International officers, including

membership lists used to determine the number of delegates to which a Local Union is entitled and the original completed credentials of the delegates, shall be preserved by the International Secretary-Treasurer for at least one year following the election.

(O) Any member desiring to protest the conduct of the election shall lodge his or her protest in writing within 30 days of the election with the International Executive Board.

(P) The International Secretary-Treasurer shall submit a full report of the election of International officers to the Editor of the *Advocate* for publication.

(Q) In the event of a vacancy in any office on the International Executive Board, other than that of the International President, the International President shall immediately make such vacancy known to the International Executive Board. The International Executive Board, by majority vote, may elect a successor. Upon each unsuccessful balloting, the name of the candidate receiving the fewest number of votes shall be eliminated.

(R) In case of a vacancy in the office of International President, the International Secretary-Treasurer shall perform the duties of the International President until his or her successor is elected. It shall be the duty of the International Secretary-Treasurer to immediately make known such vacancy to the International Executive Board. The International Executive Board, by majority vote, shall elect a successor. Upon each unsuccessful balloting, the name of the candidate receiving the fewest number of votes shall be eliminated.

SECTION 18

International
Revenue

(A) The operating revenue of the International Union shall be derived as follows:

1. From a fee of $2.50 on each applicant for membership or reinstatement; provided that, effective January 1, 1978, such fee shall be $5.00.

2. From assessments levied by the International Executive Board.

3. From investments.

4. From a monthly per capita tax on each member, based upon the membership on the last day of each month; to be remitted to the International Secretary-Treasurer on or before the tenth day of the following month, of $2.60 during the calendar year 1977; of $3.40 to be remitted during the calendar year 1978; of $3.90 to be remitted during the calendar year 1979; and of $4.15 to be remitted during the calendar year 1980; except that beginning in 1981 the International Executive Board is authorized to increase such per capita tax by an additional amount not in excess of $.50, to be effective through December 31, 1982, unless otherwise changed by amendment to this Constitution.

5. From a monthly per capita tax of 5¢ on each member, based upon the membership on the last day of each month, to be remitted to the International Secretary-Treasurer, on or before the tenth day of the following month, which shall be allocated to a political educational fund to be used for education, legislative, political, civic, welfare, community, and other similar activities. The 5¢ per capita tax provided for by this section shall be effective January 1, 1978, and thereafter.

6. From all other lawful sources.

(B) Where employees pay service fees or dues to a Local Union pursuant to "Agency Shop," RAND formula, service fee provisions, or otherwise, a Local Union, in recognition of services performed by the International Union and in discharge of its obligations under the Constitution as a Local Union, shall pay to the International Union monthly service fees equal to the per capita tax payments otherwise due on each member. Where initiation service fees are collected by a Local Union in lieu of regular initiation or reinstatement fees, the $2.50 fee set forth in Section 18(A) shall be remitted to the Inter-

national Union; provided that, effective January 1, 1978, such fee shall be $5.00.

(C) The fees and monthly per capita tax or service fees set forth in Section 18(A) and (B) shall be paid by each Local Union to the office of the International Secretary-Treasurer no later than the tenth day of the month following that for which they are due. If such fees and monthly per capita tax or service fees are not received by the tenth day of the second month following that for which they are due, the International Secretary-Treasurer shall send a notice of delinquency by certified mail to the Local Union President and Secretary-Treasurer. If such fees and monthly per capita tax or service fees are not received by the tenth day of the third month following that for which they are due, the Local Union shall be subject to such remedial or corrective action as the International President or International Executive Board may deem just and proper.

SECTION 19

Retail Clerks Advocate
and Other Publications

(A) The International Union shall publish an official journal, to be known as the *Retail Clerks Advocate*, and such other publications as the International President may determine to be necessary or advisable to assist in carrying out the objectives and principles of the International Union.

(B) Members of the International Union shall receive the *Advocate* without subscription cost. Other persons may, in the discretion of its editor, receive the *Advocate* by subscription at such rates as may be determined by the International Executive Board or on a complimentary basis.

(C) Any aggrieved member or chartered body may appeal editorial decisions of the *Advocate* editor to the International Executive Board, whose decision shall be final.

Union Shop Identification Card

(A) The article known to this organization as the Union Store Card, and generally referred to as the Store Card, which may also take the form of a decalcomania, is, and always shall remain the property of the International Union. The International Executive Board shall have the authority from time to time to issue a Store Card or such other indicia which indicates that a store, establishment, or facility is organized by the Retail Clerks International Union or any of its chartered bodies. Such Store Card or other indicia of organization by the Retail Clerks International Union or any of its chartered bodies shall be the only such card or indicia recognized as legal by the International Union.

Such Store Card or other indicia shall be distributed to Local Unions for use in their jurisdiction in accordance with the price list of the International Union. All Local Union Secretary-Treasurers must keep an accurate record of the serial numbers and the name and address of each establishment to which Store Cards or other indicia are issued.

(B) Any establishment recognized as union by the laws and principles of the International Union shall be entitled to display the Store Card or other indicia, provided the proprietor or persons duly authorized to con-

duct such establishment shall have signed a collective bargaining agreement with the Local Union or the International Union.

(C) No Local Union shall sell, rent, lease, or charge any fee for the Store Cards or other indicia.

SECTION 21

International Emblem
and Union Label

(A) The union emblem and union label adopted by this International Union is:

and shall be the only official union emblem and union label recognized by the members of the International Union, provided that the International Executive Board shall be authorized to redesign such union emblem and union label or design additional union emblems or union labels during the interim of the 27th and 28th International Conventions. All Local Unions shall request the public, and especially the members of other labor organizations, to trade exclusively with members of the International Union.

(B) The title of the International Union emblem and union label shall be retained by the Retail Clerks International Union, and the right to the use of the union emblems and union labels shall be leased to Local Unions, not sold, by the International Secretary-Treasurer, who is duly empowered to make a demand for and recover union emblems and union labels in the possession of non-union or other unauthorized persons.

(C) Any member who shall be in arrears for dues, fines, or assessments shall, upon demand from the Local Union, forfeit the union emblem.

(D) All union emblems shall be obtained directly from or approved by the International Secretary-Treasurer.

SECTION 22

District Councils

(A) District Councils, which shall be subject to the Constitution and laws of the International Union, may be established by the International Executive Board with such jurisdiction as the International Executive Board may determine. All Local Unions situated within the jurisdiction of a District Council shall affiliate with it, unless otherwise directed by the International Executive Board.

(B) District Councils may adopt or amend bylaws for their government as they deem appropriate, provided they conform to the Constitution and laws of the International Union and are approved by the International President. Such bylaws shall provide for the collection of a per capita tax from the Local Unions affiliated with the District Council; for the holding of a Council Convention, which shall meet at least biennially; for the establishment of an Executive Board, which shall meet at least annually, comprised of not less than one representative from each affiliated Local Union; for the election of a President, who shall be the chief executive officer, a Secretary-Treasurer, at least two Vice Presidents, a Recorder, and such other officers as the District Council may deem appropriate. Unless otherwise provided in a District Council's bylaws, the term of all offices shall be four years. In the event applicable law allows a term longer than four years, the District Council may amend its bylaws to provide for such longer term. Bylaw amendments establishing terms of office shall be effective for the next election after their adoption.

(C) The duties and responsibilities of District Councils and of their elected and appointed representatives under the Constitution and laws of the International Union shall be the same as those of Local Unions and of their elected and appointed representatives, and all procedures applicable to Local Unions and their representatives shall be applicable to District Councils and their representatives, except where the International Executive Board determines that such duties, responsibilities, and procedures are incompatible, with the purposes of District Councils.

SECTION 23

Local Union Charters
and Suspensions

(A) Seven or more persons in one locality who are eligible to membership in this International Union, as specified in this Constitution, may make application for a charter to the International Secretary-Treasurer, such application to be accompanied by a $5.00 fee on each applicant. The International Secretary-Treasurer shall issue charters upon the approval of the International President. In issuing charters, the International President shall determine the jurisdiction of Local Unions and modify the jurisdiction of Local Unions from time to time, subject to an appeal to the International Executive Board.

(B) Where a charter is applied for within the jurisdiction of an existing Local Union, it shall not be issued until the existing Local Union has had an opportunity to present its views to the International President. The decision of the International President to grant, to modify, or not to grant such charter shall be final, subject to an appeal to the International Executive Board.

(C) No Local Union shall entertain a resolution to withdraw from the International Union or to dissolve unless notice that such resolution is to be entertained is sent to each member of the Local Union at least 60 days prior

to the regular meeting at which such resolution is to be acted upon. Such resolution shall be read at the regular meeting prior to the regular meeting at which such resolution shall be entertained. At least 60 days prior to the regular meeting at which such resolution is to be entertained, notification by certified mail that such resolution has been proposed shall be given to the International President by the President of the Local Union. A Local Union cannot withdraw from the International Union or dissolve, so long as seven or more active members object thereto.

(D) The International President shall have the authority to expel Local Unions after a hearing conducted pursuant to the provisions of Section 9(K), subject to an appeal to the International Executive Board. If the International President shall determine that any Local Union is defunct, dissolved, or withdrawn, or if he or she expels a Local Union, he or she shall direct that all property, books, and records held in the name of, or on behalf of, such Local Union must be delivered immediately to the International Secretary-Treasurer, or his or designated representative, to be held in safekeeping by the International Union for a period of one year. If such Local Union shall be reorganized during that period, such property, books, and records shall be returned to the Local Union. If no such reorganization occurs, such property, books, and records shall, without further proceedings, become the property of the International Union. The officers and members of such Local Union shall be responsible for compliance with this section within 30 days of such determination under penalty of being prosecuted by law, or forfeiture of membership and benefit in this International Union, or both.

(E) Members of defunct or expelled Local Unions may, upon request, transfer either to general membership or to such Local Union as may be directed by the International President. Such transfer shall become effective immediately.

SECTION 24

Local Union Duties and Powers

(A) Local Unions shall have the power to establish and amend bylaws and rules for their government and the members of the International Union working in their jurisdiction, which shall in no way conflict with the Constitution and laws of the International Union and must be filed with and approved by the International President to be effective.

(B) Local Unions, or members thereof, shall not seek, solicit, or receive financial assistance from any other chartered body or any other labor organization, or solicit advertising, except with the approval of the International President, subject to an appeal to the International Executive Board.

(C) All Local Unions shall be required to abide by and conform with all of the provisions of the Constitution and laws of the International Union, and shall pay to the International Union promptly, when due, all dues, per capita tax, bills payable, and assessments, which shall from time to time become due and payable under the provisions of the Constitution and laws.

(D) All Local Unions are expressly prohibited from contracting or incurring any indebtedness chargeable to the International Union without the written consent and authority of the International President, with the approval of the International Executive Board.

(E) Local Unions may employ legal counsel; provided, however, 1) the International Union shall in no way be liable for any fees, costs, or expenses incurred by such employment, unless assumed in writing by the International President; 2) the employment of such legal counsel is reported in writing forthwith to the International President; 3) such legal counsel is duly licensed to practice law in the courts of the state or jurisdiction in which the Local Union is situated, and whose employ-

ment, in the judgment of the International President, is not contrary to or liable to jeopardize the best interests of the Local Union and the International Union.

The International President may employ or assign counsel for the purpose of association and assistance where needed.

(F) When State and Local Central Bodies or appropriate Departments of the American Federation of Labor and Congress of Industrial Organizations, and Provincial Federation of Labour and Labour Councils of the Canadian Labour Congress, exist, Local Unions should affiliate with such appropriate bodies.

SECTION 25

Local Union Membership Meetings

(A) Each Local Union shall hold at least one regular meeting of the membership each month; provided, however, that a Local Union may provide, through a bylaw provision, for not less than one regular membership meeting every calendar quarter; provided, further, that such quarterly meetings shall not be more than four months apart. Such regular meetings shall consist of a single meeting for all members; provided, however that a Local Union may elect, through its bylaws, to hold a series of meetings for all of its members on an area basis. Regular meetings of the membership, whether held as a single meeting or as a series of meetings, must be held within the time and in the manner provided in this section and in any applicable provisions of the Local Union's bylaws, except upon the approval of the International President.

(Б) A Local Union shall call a special meeting of its membership whenever requested in writing by ten percent of the membership, as quickly as is practical and reasonably convenient, provided that, where a regular membership meeting is scheduled within a 30-day period of such a membership request, the Local Union President may defer such requested meeting to the date of the regularly scheduled meeting. A special meeting shall also be

called when directed by the Local Union Executive Board or President. Special meetings shall be held in the same manner as the Local Union holds its regular meetings.

(C) Local Unions may hold meetings of a portion of their membership on an occasional or regular basis as may be determined by the Local Union. Such meetings of the Local Union membership, except as provided in Section 32, may pass upon recommendations to be referred to the regular meeting or to a special meeting of the membership for its action thereon.

(D) Adequate notice shall be given of the time and place of all meetings not held on a periodic basis at a set time and place, so that all members involved have an opportunity to attend. Adequate notice shall also be given of the purpose of all special meetings.

(E) Not less than seven members shall constitute a quorum at any membership meeting.

(F) All business at meetings of Local Unions shall be recorded in the language predominantly used in the territory covered by the charter of the Local Union.

SECTION 26

Local Union Officers

(A) The constitutional officers of Local Unions shall be President, Secretary-Treasurer, Recorder and not less than three Vice Presidents, all of whom shall constitute the Executive Board of the Local Union. The President of the Local Union may appoint Sergeants-at-Arms to assist in properly conducting the Local Union meetings.

(B) 1. The President shall be the chief executive officer of the Local Union and shall be responsible for enforcing the Constitution and laws of the International Union and the bylaws and rules of the Local Union. The President shall have authority to interpret the bylaws of the Local Union, subject to an appeal to the Local Union Executive Board. The President, or the President's designated representative, shall preside at meetings of the Local Union and the Local Union Executive Board and

shall decide all questions of order, subject to an appeal to the Local Union. The President, by virtue of office shall be a delegate or representative to any convention or meeting to which the Local Union is entitled to and elects to send delegates or representatives, except as provided in Section 15(E). The President shall have general supervision over the affairs of the Local Union. The President shall appoint all committees as may be necessary and shall perform such other duties as are required by the President's office. The President shall vote where that vote would be determinative of the outcome or in all cases where a secret ballot vote is conducted.

2. The President shall authorize the disbursement of funds with the consent of the Local Union Executive Board. Disbursements shall be made in accordance with Section 28(E).

3. The Local Union President may employ special representatives, who shall be members of the International Union, for the primary purpose of organizing unorganized workers within the jurisdiction of the International Union, and may employ temporary representatives, who shall be members of the International Union, for temporary projects. The Local Union President may also employ or retain such professional or other assistants and office personnel as may be necessary to conduct the affairs of the Local Union. The Local Union President may terminate the employment of any such person at the end of an assignment or in the best interest of the Local Union.

4. The Local Union President may employ Business Representatives, who shall be members of the International Union, for the purpose of carrying out the duties and responsibilities of the Local Union. The Local Union President may terminate the employment of any such Representative for reasonable cause, subject to an appeal to the Local Union Executive Board and such further appeal as may be provided in the Local Union's bylaws.

5. The Local Union President shall determine the compensation of Business Representatives, special and temporary representatives, office personnel, and such professional or other assistants employed or retained by the Local Union, subject to the approval of the Local Union Executive Board.

6. The Local Union President shall be the custodian of the Union Store Cards and such other union shop identification cards as are issued, pursuant to Section 20.

7. The Local Union President shall forward a monthly membership report on forms provided or approved by the International Union, giving an accurate record and summary of the membership as of the end of the month for which the report is submitted. The report must list each newly initiated and reinstated member during the month in which the Local Union first collects all or any part of the initiation or reinstatement fee or any dues from the member. A completed membership application for each such member listed must be forwarded to the International Secretary-Treasurer not later than the next monthly report following the report in which the member is listed. The report shall indicate whether reinstated members are reinstating following a suspension or upon deposit of a withdrawal, military leave courtesy, or paid-up life membership card. The report shall also list the names of all outgoing members of the Local Union during the month, indicating whether by suspension, withdrawal, military leave, or death of the member. The monthly membership report, accompanied by the full payment of per capita tax, fees, and all items for which the Local Union has been billed, must be forwarded to the International Secretary-Treasurer no later than the tenth day following the end of the month for which the report is made, unless an extension for forwarding has been requested by the Local Union and granted by the International Secretary-Treasurer.

8. The Local Union President shall ensure that the home address and social security number or social insur-

ance number of each and every member is sent in to the International Headquarters at the time of reporting affiliation, as well as all changes of address when same occur. New Local Unions, when organized, shall furnish the addresses and social security numbers or social insurance numbers of all members upon the first report. A copy of this report shall be kept on file by the Local Union.

9. The Local Union President shall receive and properly receipt all money collected.

10. The Local Union President shall make an itemized statement at each regular meeting of the Local Union Executive Board of all moneys received and paid out by the President, the accuracy of which shall be certified by the trustees of the Local Union, and the President shall make the Local Union financial records available to the trustees at their request. The President shall make such itemized statement available for inspection by the members at regular meetings and at the Local Union on a reasonable basis. The President shall also make a financial report at each regular meeting of the membership.

(C) The Vice Presidents shall assist the President in the discharge of the President's official duties. They shall be numerically designated for election purposes only.

(D) The Secretary-Treasurer of the Local Union shall assist the President in the carrying out of the President's duties and responsibilities and shall conduct the Secretary-Treasurer's office under the general supervision of the President.

(E) The Recorder of each Local Union shall report the minutes of each Local Union membership and Executive Board meeting, keeping an accurate and permanently bound record of all proceedings.

(F) 1. The Executive Board of the Local Union shall have full and complete charge of all business of the Local Union not otherwise delegated to a specific officer or officers, or reserved to the membership. It shall act upon all appeals properly presented to it. It shall meet not less

often than once a month or in additional meetings upon the call of the President or a majority of its members. A majority of its members shall constitute a quorum.

2. The Local Union Executive Board shall annually select from among its members a Board of Audit, consisting of three members, who shall not be members of the Board of Trustees. The Board of Audit shall annually examine the trustees' and certified public accountant's reports and shall report their findings to the next regular meeting of the Local Union.

(G) 1. All Local Union officers who are entrusted with any books or records of a Local Union shall maintain and keep such books or records in good order and shall at times have them available for authorized audit, examination, or inspection.

2. The system of bookkeeping used by the Local Union shall be in accordance with practices approved by the International Secretary-Treasurer's office.

(H) Salaries and expenses of Local Union officers shall be authorized by the membership of the Local Union.

SECTION 27

Local Union Elections

(A) An active member in the Local Union, who has been an active member in the Local Union, or who had been a member of another organization merged with the Local Union, for a continuous aggregate of at least one year immediately preceding January 1, of the year in which the election is held, or an active member in the Local Union who has been an active member in the Retail Clerks International Union continuously for at least two years immediately preceding January 1 of the year in which the election is held, shall be eligible to hold any Local Union office.

(B) The constitutional officers of the Local Union shall be elected in the following manner; and unless otherwise provided in the Local Union's bylaws, the term of all

offices shall be three years. In the event applicable law allows a term longer than three years, the Local Union may amend its bylaws to provide for such longer term. Bylaw amendments establishing terms of office shall be effective following the next election after their adoption. Terms of office shall expire on December 31.

1. Nominations shall be conducted during the third or fourth quarter of the election year. Not less than 15 days prior to nominations, notice shall be mailed by the Local Union to each member at his or her last known home address, setting forth the times, places, and manner for conducting the nominations. The nominations shall be conducted at such times and places as will afford all active members a reasonable opportunity to nominate.

2. Elections shall be conducted during the third or fourth quarter of the election year, as provided in the Local Union's bylaws. Not less than 15 days prior to elections, notice shall be mailed by the Local Union to each member at his or her last known home address, setting forth the times, places, and manner for conducting the elections. The elections shall be conducted at such times and places as will afford all active members a reasonable opportunity to vote. If the Local Union members are so widely dispersed that they must travel an unreasonable distance to vote at a single polling place, the Local Union shall provide for multiple polling places. Any active member in the Local Union, as defined in Sections 4(B) and 5(A) of this Constitution, shall be eligible to vote in the Local Union's elections.

3. Notice of nominations and elections may be combined into a single notice, which shall be mailed not less than 15 days prior to nominations.

4. No member may be nominated to more than one office in any election, and no member may hold more than one Local Union elected office at any one time. The salaried representatives of the Local Union shall not constitute more than 50 percent of the membership of the Local Union Executive Board.

5. The Local Union President shall select a general chairperson who shall be a member of the Local Union to supervise the conduct of the nominations and elections and not less than three members to act as election judges to assist the general chairperson. The general chairperson and election judges shall not be candidates for Local Union office. They shall maintain custody of all ballots and election registers during the conduct of the elections. Where multiple polls are used, at least one election judge shall supervise the election at each polling place.

6. Each elegible member desiring to vote shall sign an election register prepared by the Local Union. The voter shall be given a ballot prepared by the Local Union and shall be provided an opportunity to vote his or her ballot in secrecy. Ballots shall bear no number or marks which might identify the voter. After marking his or her ballot, the voter shall fold and place it in a secured ballot receptacle provided by the Local Union. Alternative procedures for voting by machine, adequate to ensure the secrecy of the ballot, may be provided. Adequate safeguards to ensure a fair election shall be provided by the Local Union officers and election officials.

7. Where the election is conducted at a single membership meeting, the results shall be tallied and recorded by the general chairperson of the election and the election judges at the close of the voting.

8. Where the election is conducted at multiple times or polls, the general chairperson of the election and an election judge from each polling place shall meet at the offices of the Local Union not later than 2:00 p.m. of the second day following the last day on which the election was held. They shall there tally and record the results of the election.

9. The Local Union, in its approved bylaws, may provide procedures for election by mail referendum in all or certain areas in lieu of the election procedures specified in Section 27(B).

10. Write-in candidates and proxy voting shall not be permitted.

11. A plurality of votes cast shall be required for election, except as to the office of Local Union President or Secretary-Treasurer, where a majority of votes cast shall be required for election. Where the election for an office other than President or Secretary-Treasurer results in a tie or where no nominee for Local Union President or Secretary-Treasurer receives a majority of votes cast, a run-off election between the two nominees with the higher number of votes shall be conducted.

12. When nominations have been completed and there are unopposed candidates, the Local Union President shall declare such unopposed candidates or candidates duly elected by acclamation.

13. The ballots and all other records pertaining to the nominations and elections, including the membership mailing lists which were used to send the notices of the nominations and elections, shall be preserved for not less than one year by the Local Union President.

14. A copy of the results of the election shall be immediately mailed to the International President.

15. Formal installation of the newly elected officers may be either before or after the start of their term of office to suit the convenience of the Local Union, but in any event either during the months of December, January, or February; provided, however, that no officer shall be deemed to be in office unless bonded where required by the Constitution and laws of the International Union.

16. No funds of the International Union or any of its chartered bodies shall be used to promote the candidacy of any person for any elective office or position within any chartered body.

17. No publications sponsored by or supported by the International Union or any chartered body shall be used to promote the candidacy of any person for elective office or position within any chartered body.

18. Not more than 15 days subsequent to the elections, all challenges to the election shall be submitted to the general chairperson of the election and the election judges to render a decision for the Local Union. Not more than 15 days subsequent to such decision, a challenging party may appeal the decision to the International President. Where the general chairperson of the election and the election judges fail to render a decision within 30 days of the Local Union election, the challenging party may appeal to the International President not later than 15 days thereafter.

19. The decision of the International President may be appealed to the International Executive Board not later than 30 days after such decision has been rendered.

20. Any challenge or appeal which could have been presented in compliance with these filing requirements, but was not, shall be deemed to have been waived.

(C) 1. Where vacancies occur in any office of a Local Union, the Local Union Executive Board, not later than 60 days after the office is declared vacant, shall fill the vacancy for the balance of the term. However, a vacancy in the office of Local Union President shall be filled no earlier than 30 days nor later than 60 days after the office is declared vacant.

2. In the case of a vacancy in the office of Local Union President, the Secretary-Treasurer of the Local Union shall perform the duties of such office until a new President is elected.

(D) If any officer shall fail to attend three successive meetings, without satisfactory excuse, the office shall be declared vacant by the Local Union Executive Board.

SECTION 28

Local Union
Board of Trustees

(A) The Local Union President, Secretary-Treasurer, and a Vice President to be elected annually by the Local

Union Executive Board shall, by virtue of their offices, continue the Local Union Board of Trustees.

(B) The trustees shall be responsible for ensuring that the funds and property of the Local Union are:

1. Properly received and managed for the sole use and benefit of the Local Union;
2. Properly accounted for monthly; and
3. Expended, used, and invested only upon proper authorization.

(C) The trustees shall be responsible for ensuring that all finances of the Local Union are managed in accordance with the Constitution and laws of the International Union and the approved bylaws of the Local Union.

(D) The trustees shall be responsible for ensuring that all moneys received by the Local Union are promptly deposited in such banks as the Local Union may desiginate.

(E) The signatures of two of the three trustees shall be required on all checks and all other financial documents, and the trustees shall be responsible for ensuring that all banks and other financial institutions holding funds or property of the Local Union are so instructed.

(F) The trustees shall examine the financial records of the Local Union and shall report their findings to the Local Union Executive Board and the Local Union membership at the next regular meeting.

(G) The trustees shall employ a certified public accountant to assist them in the performance of their duties and to perform a complete audit of the Local Union not less often than once a year.

(H) The trustees shall make a monthly financial report to the International Secretary-Treasurer on forms supplied or approved by the International Union, to be accompanied by copies of all certified public accountant's audits or reports.

(I) The trustees shall ensure that Local Union officers, representatives, and employees are bonded as directed by the International Secretary-Treasurer and in accordance with Section 11(M).

(J) The trustees shall invest and reinvest the surplus funds of the Local Union, upon the approval of the Local Union Executive Board, according to standards applicable to fiduciaries. The title to a headquarters building or other real property held by the Local Union shall be vested by proper conveyance in its own name; in the name of the Board of Trustees and their successors in office, in trust for the sole use and benefit of the Local Union; or in a separate building corporation whose charter and other corporate documents have been approved by the International President.

SECTION 29

Local Union Funds

(A) 1. The general funds or property of a Local Union shall be used only for such purposes as are specified in the Constitution and laws of the International Union, the Local Union bylaws, or as may be required to transact and properly conduct its business.

2. All moneys paid out of the funds of a Local Union must be authorized by the Local Union Executive Board, except for moneys required to be paid out of the funds of a Local Union by the Constitution or laws of the International Union or the approved bylaws of the Local Union.

3. The Local Union shall, under no circumstances, use any of its funds for loans or donations to officers and employees. The Local Union Executive Board may authorize financial assistance to members in the event of a strike, lockout, or other economic actions, or in the case of a personal disaster.

(B) All officers at the expiration of their respective terms of office, or when removed or when their offices are declared vacant, shall deliver to their duly elected and qualified successors, and if there is no such succesor then to the duly elected trustees of the Local Union, all books, papers, moneys, and other property in their possession belonging to the Local Union or International Union, and

they shall not be relieved from their bonds or obligations until they have complied with this requirement.

(C) All official supplies and forms required under this Constitution and laws to be used by Local Unions shall be obtained from or approval by the International Secretary-Treasurer, and not otherwise.

SECTION 30

Local Union Revenue

(A) 1. Except as otherwise provided in this Constitution, reasonable dues, initiation and reinstatement fees, and general or special assessments shall be established, increased, or levied by Local Unions by a majority vote by secret ballot of the members at a regular or special meeting, subject to the approval of the International President. Not less than 15 days' written notice of such proposed action shall be sent to the membership prior to voting.

2. No Local Union may provide for dues for any member which are less than $6.00 per month, unless otherwise approved by the International Executive Board; provided that, Local Unions may provide for dues for associate members which are not less than $4.00 per month. An applicant for membership shall pay an initiation or reinstatement fee, unless otherwise provided pursuant to this Constitution, plus the current month's dues and assessments.

3. In order to ensure the financial health of the International Union and its Local Unions, the dues in effect in each Local Union on July 1, 1977, shall be increased in the amount of $2.00 per month for each member effective January 1, 1978, except that a Local Union Executive Board may elect to defer all or part of this increase to a date not later than January 1, 1981, provided the Local Union Executive Board first determines that its dues structure in relation to its obligations will permit such deferral.

4. In the event that the International Executive Board exercises its authority pursuant to Section 18(A)4 and

increases the monthly per capita tax, it shall be authorized to concurrently direct an increase in the amount of monthly dues for each member in an amount not to exceed $1.00, except that a Local Union Executive Board may elect to defer all or a part of such increase for a period not to exceed two years, provided the Local Union Executive Board first determines that its dues structure in relation to its obligations will permit such deferral.

5. Any increases in dues voted on by a Local Union to take effect after December 31, 1976, may, at the election of the Local Union Executive Board, be deducted from the increases otherwise required by Section 30(A).

(B) Each Local Union shall maintain an accurate record of the dues, and other moneys collected from each member. All moneys collected by the Local Union for initiation fees, reinstatement fees, dues, assessments, etc., shall be the property of the Local Union, with the exception of the monthly per capita tax and fees, as set forth in Section 18, and assessments imposed by the International Executive Board upon the Local Union or individual members in accordance with the Constitution and laws of the International Union.

(C) Each Local Union shall be responsible for the money of all members paid to the Local Union and not turned in to the International Secretary-Treasurer in accordance with the Constitution. Every Local Union shall be responsible for any and all benefits due members or their heirs where a member is not in benefit standing in the Retail Clerks International Union through the neglect or fault of a Local Union or any of its officers to remit per capita taxes or assessments, or to perform any other duties incumbent upon them, within the time limit fixed by this Constitution.

(D) Any Local Union may include in its bylaws a provision for payment by the Local Union of the dues of such of its members who are temporarily incapacitated due to illness or disability, unemployed due to an authorized strike or a lockout, or who are officers or stewards

not in the primary employment of the International Union or any of its chartered bodies.

(E) 1. Dues shall be due and payable on or before the first day of the month for which same are due.

2. Any member two calendar months in arrears for dues and fees to the Local Union shall stand suspended if same are not paid on or before the first day of the third month. After the expiration of such period, no Local Union shall accept dues without a reinstatement application and the required fee. The responsibility for maintaining membership rests with the member; suspension, therefore, when it occurs, is the voluntary act of the members involved.

(F) A suspended member working within the jurisdiction of the International Union may upon application be reinstated in the Local Union within whose jurisdiction he or she is working, upon the payment to the Local Union of the regular reinstatement fee, dues, or assessments of that Local Union, and, in addition, he or she shall pay to the Local Union from which he or she is suspended any dues, fines, or assessments due at the time of suspension.

(G) The provisions of this Contitution relating to the payment of dues, assessments, fines, penalties, etc., shall not be construed as incorporating into any union-security contract those requirements for good standing membership which may be in violation of applicable law, nor shall they be construed as requiring any employer to violate any applicable law. However, all financial obligations imposed by or under this Constitution and Local Union bylaws (and in conformity therewith) shall be legal obligations of the members upon whom imposed and enforceable in a court of law.

SECTION 31

Funeral Benefits

(A) The Retail Clerks International Union shall maintain the following plan, to be known as the Retail Clerks

International Union. Funeral Benefit Plan, hereafter referred to as the "Plan," for the purpose of encouraging the prompt payment of dues by certain members of the Retail Clerks International Union. The funeral benefits provided for in the Plan are a gratuity; they are not charged for, nor are dues increased because of them, nor does any premium have to be paid in order to receive them.

(B) 1. To be eligible to participate in the Plan, an individual must have been a member of the Retail Clerk's International Union on December 31, 1955. To participate in the Plan, a member must have maintained membership continuously from that date until the date of death.

2. To meet the requirement of maintenance of membership, a member must not at any time on or after December 31, 1955, have been more than two months in arrears in the payment of dues, absent a valid excuse for nonpayment, and must not since that date have been suspended or expelled from the Retail Clerks International Union for any reason other than the nonpayment of dues. An arrearage in the payment of dues shall not be considered as validly excused unless it resulted from the incompetence, senility, serious illness, indigence, or medically related confinement of a general member.

(C) A $500.00 funeral benefit is payable on behalf of Plan participants who were less than 50 years old when they joined the Retail Clerks International Union. A $250,000 benefit is payable on behalf of Plan participants who were more than 50 years old when they joined.

(D) Funeral benefits otherwise payable upon the death of a Plan participant will be forfeited if death results from national catastrophe or war.

(E) 1. A participant's funeral benefit is payable to the beneficiary whom he or she designates. If no beneficiary is designated, or if the designated beneficiary is deceased, benefits will be paid to the first of the following persons who can be determined to be alive:

a) the member's spouse;
b) the member's heirs;
c) the member's executor, if the member left a will.

2. If none of the above are alive, a participant's funeral benefit will be paid to his or her Local Union for funeral expenses actually incurred by it for the participant's burial or cremation.

(F) Funderal benefits are paid as they become due out of the general treasury of the Retail Clerks International Union. No assets of the Retail Clerks International Union are specifically allocated to or set aside for the payment of such benefits.

(G) 1. The Retail Clerks International Union Funeral Benefit Plan is self-administered by the Retail Clerks International Union. The International Secretary-Treasurer is the administrator of the Plan, and shall be the named fiduciary with respect to the Plan.

2. The name, business address, and business telephone number of the International Secretary-Treasurer is: 1775 K Street, N.W., Washington, D.C. 20006, Telephone Number: Area Code (202) 223-3111.

3. The Secretary-Treasurer of the International Union shall have authority to control and manage the operation and administration of the Plan. The Secretary-Treasurer may appoint such assistants or representatives as he or she deems necessary for the effective exercise of his or her responsibilities for administration of the Plan, and may delegate to them any powers and duties, whether ministerial or discretionary, as he or she deems expedient or appropriate, including, but not limited to, the authority and responsibility for reviewing and acting on a claim for funeral benefits.

(H) 1. I claim for funeral benefits must be filed by the person entitled to receive them, or his or her duly authorized representative, with the International Secretary-Treasurer. Claims are filed by the filing of a copy of the deceased member's death certificate from the attending physician, coroner, or health officer.

2. Upon submission of a claim, the International Secretary-Treasurer shall request the deceased member's Local Union to examine the member's membership records for a period of five years prior to the date of death and issue a certificate under seal from the Local Union that the requirements of Section 31 have been satisfied and that the claim is otherwise correct. Within 30 days of the sending of such request, the Local Union shall forward the requested certificate to the International Secretary-Treasurer, or shall forward a statement setting forth reasons why the requirements of Section 31 have not been met.

3. Within 90 days of the date on which a claim for funeral benefits is filed, a determination shall be made whether or not to pay the claim, except that if special circumstances require, the period for making the determination may be extended an additional 90 days.

(I) If the International Secretary-Treasurer approves a claim for funeral benefits, he or she will promptly send to the deceased's Local Union a check for the amount of the benefit payable to the person entitled to receive it under the provisions of the Retail Clerks International Union Constitution. If the deceased was a general member of the Retail Clerks International Union, the International Secretary-Treasurer will send the check to the deceased's beneficiary or other person entitled to receive it under the terms of the Retail Clerks International Union Constitution.

(J) 1. If a claim for funeral benefits is denied, the claimant shall be given a clear, written explanation of the reasons for the denial which identifies the provision of the Plan upon which the denial was based. The claimant will also be provided an explanation of the steps to be taken to obtain review of the denial. If the claim was denied because of lack of material needed to determine the validity of the claim, the claimant also will be given a written description of any additional material or information which the Retail Clerks International Union

needs in order to make a final determination as to the claim. The claimant will be granted 60 days from the date on which such statement was sent to provide the additional information or material.

2. If a claim for funeral benefits is denied, the claimant may within 60 days of receiving notice of such denial request review of it by the International Secretary-Treasurer. If, upon review, the International Secretary-Treasurer, or such person as he or she may designate to conduct the review, affirms the denial of the claim, the claimant may within 90 days of receipt of notice of such affirmance appeal to the International Executive Board. The International Executive Board shall establish rules governing requests for review and appeals which shall provide for prompt action at every level of review or appeal, the provision of written notice to claimants of the reasons for the denial of appeals, afford claimants the opportunity for a full and fair hearing, and comply with applicable laws and regulations.

3. Any right of a claimant under the terms of the Plan or under Executive Board rules established pursuant to Section 31(J)2 of the Constitution may be exercised by such representative as the claimant may select, and such representative shall be deemed to be the claimant for all Plan purposes, except that checks for funeral benefits will be payable only to the claimant.

(K) The Retail Clerks International Union's identification number assigned by the Internal Revenue Service is EIN 530220586. The Plan number assigned to the Funeral Benefit Plan by the Retail Clerks International Union is PN501.

(L) Legal papers involving Plan benefits or related matters can be served on the International Secretary-Treasurer, Suffridge Building, 1775 K Street, N.W., Washington, D.C. 20006.

(M) The date of the end of the year for purposes of maintaining the Plan's records is April 30.

(N) 1. Participants in the Retail Clerks International Union Funeral Benefit Plan are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974. ERISA provides that all Plan participants shall be entitled to:

a) Examine, without charge, all Plan documents, including a summary Plan description and the provisions of the Retail Clerks International Union Constitution which establish the Plan;

b) Obtain copies of all Plan documents and other Plan information upon written request to the Plan administrator. The administrator may make a reasonable charge for the copies;

c) File suit in a federal court, if any materials requested are not received within 30 days of the participant's request, unless the materials were not sent because of matters beyond the control of the administrator. The court may require the Plan administrator to pay up to $100.00 for each day's delay until the materials are received.

2. In addition to creating rights for Plan participants, ERISA imposes obligations upon the persons who are responsible for the operation of the Funeral Benefit Plan.

3. These persons are referred to as "fiduciaries" in the law. Fiduciaries must act solely in the interest of the Plan participants, and they must exercise prudence in the performance of their Plan duties. Fiduciaries who violate ERISA may be removed and required to make good any losses they have caused the Plan.

4. Neither the Retail Clerks International Union nor any of its chartered bodies may discriminate against participants to prevent them from obtaining a funeral benefit or exercising their rights under ERISA.

5. If a beneficiary is improperly denied Funeral Plan benefits in full or in part, he or she has a right to file suit in a federal or a state court. If the lawsuit is successful, the court may, if it so decides, require the other

party to pay the beneficiary's legal costs, including attorney's fees.

6. Questions about this statement or rights under ERISA should be addressed to the Plan administrator or the nearest Area Office of the U.S. Labor-Management Service Administration, Department of Labor.

SECTION 32

Collective Bargaining Contracts

(A) The terms of proposed collective bargaining contracts shall be submitted to the office of the International President for approval upon request prior to membership action thereon. Such approval shall be for the purpose of determining whether the aforementioned terms conform to the applicable established policies, practices, and objectives of the International Union relating to wages, hours, and other working conditions, either in the locality involved, or nationally, and so that no unwarranted prejudice will occur to other Local Unions.

(B) The International Union, in approving or disapproving the terms of a proposed collective bargaining contract as above set forth shall not thereby become a party to the contract, or assume any liability with respect thereto, unless the International Union, following specific authorization of its International Executive Board, becomes a party to and signs such contract.

(C) Local Unions shall, without delay, file executed copies of all collective bargaining contracts, including all letters of understanding concerning such contracts, with the International Union.

(D) 1. The initial proposal for a collective bargaining contract or modifications of such a contract, shall be submitted to the affected membership for approval.

2. A majority vote of members present and voting shall be necessary for the adoption of the proposal, a copy of which proposal as adopted, and all subsequent modifications thereof, shall be submitted to the office of the Inter-

national President for approval immediately upon request. This will enable the International Union to discharge its obligations in the event such proposal is found to be injurious to the best interests of the International Union and the Local Unions in the area. It will also facilitate the disposition of requests for strike or defense benefits in the event such become necessary.

3. Following the adoption of such initial proposal, the Presidents of the Local Unions involved or their designated representatives or committees shall meet with the employer and endeavor to arrive at an agreement. The current status of such meetings with the employer shall be reported as regularly as practical to the affected members.

4. The proposal judged by the President or negotiating committee to be the employer's final proposal shall be submitted to the affected membership for its consideration. A majority vote of those present and voting shall be necessary to accept or reject the proposal.

5. In the event of rejection of the employer's proposal, the President of the Local Union shall, upon request, report all pertinent facts to the International President.

6. No strike or other economic action shall be taken by any Local Union in connection with a contract proposal, unless the affected membership, at a meeting or meetings thereof, has approved the same through a two-thirds majority vote of members voting. In the event the affected membership constitutes a trade division or separate contract unit whose numerical membership is less than that of the Local Union, the Local Union Executive Board must also approve such strike or other economic action.

7. In the event of rejection of the employer's proposal judged by the Local Union Presidents or negotiating committees to be the employer's final proposal and the failure of the affected membership of the Local Unions to approve a strike or other economic action by a two-thirds vote, the Local Union Executive Boards shall, after notifying the

International President and receiving acknowledgment of such notice, have authority to accept or reject such offer.

8. The affected membership, for purposes of voting on the proposal judged to be the employer's final offer or on a proposal to strike or take other economic action, shall be either the affected membership in a single Local Union or in two or more Local Unions, as separately determined by the affected membership in each Local Union involved prior to negotiations. Where such affected membership is in two or more Local Unions, the results of any such vote shall be determined by aggregating the votes of all the affected members, by a majority of the Local Unions involved based upon a separate vote of the affected membership of each, or separately by each Local Union based upon a vote of each Local Union's affected membership. The method of determining such results shall be separately determined by the affected membership in each Local Union prior to negotiations.

9. Adequate notice of all meetings required by Section 32(D) shall be given to the affected membership. Any member so notified, who fails to be present and vote, unless prevented from doing so by sickness or unavoidable circumstances, shall be subject to discipline.

10. Whenever in the judgment of the Local Union President it would be preferable to conduct a mail referendum for contract ratification, strike vote, or vote on other economic action, he or she may present his or her reasons to the International President, who may direct the conduct of mail referendum, in accordance with procedures the International President shall establish.

11. A representative assigned by the International President to assist a Local Union in preparing for or arriving at a satisfactory collective bargaining contract, or in adjusting a dispute arising under a collective bargaining contract, shall perform such duties in conjunction with the Local Union as will assist the Local Union.

(E) 1. Upon approval of a strike or other economic action by the Local Union, the President of the Local

Union, in requesting authorization from the International President to strike or take other economic measures, shall advise him or her of the action taken by the affected membership and the Local Union, together with other pertinent facts, including the number of full-time and past-time employees directly affected, and, upon request, an outline of the issues involved. No Local Union shall engage in a strike or other economic measures without first receiving the authorization of the International President and otherwise complying with the applicable provisions of this section.

2. In the event of a dispute concerning the interpretation, application, or enforcement of a collective bargaining contract, efforts shall be made by the Local Union to amicably adjust the dispute, pursuant to the provisions of the collective bargaining contract. No strike or other economic action respecting the foregoing shall take place without the approval of the Local Union and the authorization of the International President, to whom a request for such approval must be directed, accompanied by a statement setting forth all pertinent facts with respect to the dispute, including the number of full-time and part-time employees directly affected, and, upon request, an outline of the issues involved including the applicability and effect of any contract provision relating to work stoppages and/or arbitration of contract disputes.

3. The strike action, or any other economic action authorized by the International President, shall not constitute the International Union a party or a participant in any such dispute. Such authorization is solely for the purpose of assuring compliance with the provisions of this Constitution and recognition that amicable means of adjustment have been exhausted and that the best interests of the membership have been protected. Such authorization is also a necessary step to obtain consideration for strike or defense benefits.

(F) 1. Disbursements for strike, lockout, or defense purposes shall be made from the general funds of the In-

ternational Union, when authorized by the International Executive Board. Disbursements, when made, shall be subject to such qualifications as may be deemed necessary.

2. No Local Union shall receive strike or defense benefits, unless strike authorization or approval for other economic action has been obtained from the International President.

3. The financial aid allowed shall not be payable for the first week of the strike or lockout and shall apply only to those members who have been on strike or locked out for two full weeks in succession. Only those members who are on authorized strike or who are locked out shall be entitled to receive such benefits.

4. Each member receiving strike or lockout benefits must sign his or her name on the required forms. These forms, when so signed, must be countersigned by a Local Union trustee.

5. An itemized list of all disbursements for strike or defense purposes shall be forwarded to the International Secretary-Treasurer by the Local Union President at the close of each week on forms furnished by the International Union, listing and identifying the source and amount of all donations, contributions, and payments received.

6. With each such weekly report, the Local Union President shall also furnish the International Secretary-Treasurer with receipts signed by all individuals to whom money has been paid for expenses necessitated by the strike or lockout, other than the strike or lockout benefits paid to members.

7. The payment of strike, lockout, or defense benefits under this section by the International Union constitutes simply the performance of an obligation under circumstances when its members are involved in economic disputes and shall in no sense make the International Union a party to, or a participant in, such economic action.

SECTION 33

Pension and Health and Welfare Trusts

(A) Local Unions shall without delay file with the office of the International President executed copies of all Pension and Health and Welfare Trust documents including all amendments and other pertinent descriptive and operational documents necessary to clearly set forth benefits and administrative details in effect in such trusts.

(B) Local Union officers or employees, when serving as trustees of welfare and pension funds, shall do so as representatives of the union and shall not receive any remuneration for services performed for such welfare and pension funds except for reasonable expenses incurred. Such union representatives shall report regularly to the Local Union respecting the status of the trust fund and all matters pertaining thereto.

SECTION 34

Duties and Obligations

(A) Every member of this International Union, by virtue of such membership, agrees that in consideration of the rights and benefits conferred upon him or her pursuant to the terms of this Constitution, he or she shall be subject to disciplinary action for any conduct which constitutes a violation of his or her duties and obligations as stated in this section. Every member, by virtue of his or her membership, agrees that termination of membership does not terminate his or her liability for discipline for acts occurring during the period of his or her membership.

(B) Any member may be disciplined for committing any one or more of the following offenses:

1. Violating any provisions of the Constitution or laws of the International Union, any collective bargaining agreement, the approved bylaws or established rules of the member's Local Union, or, in the case of an officer or representative of the International Union or a Local

Union, the Ethical Practices Code duly adopted by the International Union;

2. Failing to pay dues, fines, assessments, fees, and other financial obligations in a timely manner;

3. Obtaining membership through fraudulent means or by misrepresentation;

4. Instituting action outside the Union against the International Union, Local Union, or any of their officers or representatives without first exhausting all remedies provided by the Local Union bylaws and rules and the Constitution and laws of the International Union;

5. Advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members;

6. Maliciously defaming or publishing or circulating material misrepresentations about the International Union, a Local Union, or any of their officers;

7. Working in the interest of or accepting membership in any organization dual to the International Union;

8. Unreasonably, unlawfully, or improperly disturbing the peace or harmony of any meeting of the International Union or any chartered body, or of any of their offices;

9. Embezzling, misappropriating, fraudulently receiving, wrongfully handling, or failing to account for the funds of the International Union, a Local Union, or any employer benefit fund, or encouraging the division of the funds of the International Union or a Local Union;

10. Using the name of any Local Union or the International Union for soliciting funds or advertising or similar activities except as provided in Section 24(B);

11. Furnishing a complete or partial list of the membership of the International Union or of any Local Union to any person other than those whose governmental position or International or Local Union office or employee benefit fund position entitles them to have a list, without specific authorization in writing from the International President;

12. Deliberately interfering with any officer or representative of the International Union in the discharge of his or her duties;

13. Deliberately engaging in conduct in violation of the responsibility of members toward the Union as an institution;

14. Crossing or working behind a legal Retail Clerks picket line authorized by a Retail Clerks Local Union;

15. Crossing or working behind a legal picket line established by a union other than the Retail Clerks, provided such picket line has the sanction of the Executive Board of the Retail Clerks Local Union in whose jurisdiction it is established and, provided further, the Retail Clerks Local Union has notified its membership of such sanction;

16. Violating the approved membership obligation or performing any acts of insubordination against the authority of the International Union;

17. Deliberately interfering with the performance of the legal or contractual rights or obligations of the International Union or any of its Local Unions;

18. In the case of any officer or representative of the International Union or of any Local Union, failing to faithfully perform the duties of his or her office or position or accepting dual compensation or expenses for the performance of duties related to his or her office or position.

(C) Any member may be charged, tried, and disciplined for violation of any of the above offenses, or for offenses set forth in the Local Union bylaws, in accordance with the procedures provided for in this Constitution.

(D) If any elected or appointed representative of the International Union or any Local Union is convicted of any one or more of the above-named offenses, he or she may be penalized as described above, and removed from office or position.

(E) Elected and appointed representatives of the International Union and its Local Unions serve in a posi-

tion of trust and responsibility and obtain information and confidences and develop abilities which should not be employed in a manner injurious to the best interests of the International Union or its Local Unions; therefore, all such representatives, in the event of termination for any reason whatsoever, assume the obligation not to seek or obtain employment or position or work with, or in, any dual or other organization antagonistic to or in conflict with the objectives, activities, policies, or jurisdiction of the International Union or any of its Local Unions. This obligation shall continue for a period of five years from termination and extends to such geographical areas as may be necessary to protect the International Union or any of its Local Unions. This provision shall in no respect be applied in derogation or limitation of any rights provided for under the Retail Clerks International Union Retirement Plan for Employees or the Retail Clerks International Union Health and Welfare Plan for Retired Employees.

SECTION 35

Disciplinary Proceedings and Appeals

(A) 1. A member shall be charged and tried in the Local Union through which he or she is a member at the time the charges are filed, except as otherwise provided in this Constitution. Any person no longer a member may be charged and tried in the Local Union through which he or she last held membership for actions committed while he or she was a member.

2. Charges may be preferred by an active member of the Local Union through which the accused is a member, or, where the accused is no longer a member, by an active member of the Local Union through which the accused was a member at the time of the alleged violation, or by a representative of the International Union.

3. More than one charging party may join in the same set of charges, but the charges must name one of the charging parties as the representative of the others to be

responsible for filing papers, receiving papers, and trying the case. Where the charges fail to designate such representative, then the first charging member named in the charge shall be considered the representative of the others.

4. Charges and other formal documents referred to in Section 35 sent by mail shall be considered filed as of the date of postmark. Charges and other formal documents referred to in Section 35 delivered in person shall be considered filed as of the date of delivery.

5. Charges shall be filed with the Local Union Executive Board within six months after the basis for the alleged violation has been discovered or should have been discovered.

6. The charges shall specify the section or sections of the International Constitution, laws, or codes, the Local Union bylaws, or rules allegedly violated and shall also set forth a short and plain factual statement of the act or acts considered to be in violation, including available information as to dates and places, in such a manner as to fairly inform the accused of the specific acts which are alleged to constitute violations of the International Constitution, laws, or codes, the Local Union bylaws, or rules. Either upon motion by the charged parties or the Local Union Executive Board, charges failing to comply with this requirement shall be dismissed by the Local Union Executive Board, without prejudice to the refiling of charges within ten days which do comply with this requirement. Dismissal of refiled charges shall constitute final action, subject to appeal as provided in Section 35(C).

7. A true and correct copy of the charges and a copy of the Constitution and Local Union bylaws shall, without delay, be served upon the accused party by the Local Union Executive Board by certified mail, return receipt requested, or in person. The accused shall be afforded a reasonable opportunity to reply in writing to the charges, if he or she so desires.

8. On motion of the accused before trial, or upon its own motion, the Local Union Executive Board may dismiss without trial any charges which, after assuming the charging party's facts are true, fail to allege actions which would constitute violations of the International Constitution, laws, or codes, the Local Union bylaws, or rules. Such dismissal shall be subject to appeal as provided in Section 35(C).

9. On motion of the accused before trial, or upon its own motion, the Local Union Executive Board may dismiss without trial any charges it finds are of such a trivial nature that the interest of the Local Union does not justify the expenditure of time, money, and other resources necessary for the conduct of a disciplinary proceeding. Such dismissal shall be subject to appeal as provided in Section 35(C).

10. Except for charges processed pursuant to Section 35(A)16, the trial on the charges shall be held as soon as practicable, but no later than 60 days following the date on which the charges are filed. However, upon request of either party, for good cause shown, an adjournment to a later date, not to exceed 120 days from the date the charges are filed, may be granted by the Local Union Executive Board shall have the power, upon its own motion, to postpone any scheduled trial, provided such postponement shall not be beyond 120 days from the date the charges are filed. Any such Executive Board decision to postpone the trial beyond the scheduled date or to set a trial for 60 days beyond the date of the charge being filed must be served upon all parties immediately. Every effort shall be made to schedule the trial so that it does not conflict with the working schedule of the parties, and at least 14 days' notice of the trial date shall be given in writing. Any request for the postponement of the trial date must be received by the Executive Board at least 3 days before the scheduled trial date unless a satisfactory showing is made of inability to comply with this requirement. The request must include good cause

for such a postponement. In the event the accused fails to appear for a duly noticed trial, it shall nevertheless proceed.

11. The trial shall take place before the Local Union Executive Board, which for purposes of Section 35 shall mean those members of the Local Union Executive Board serving for purposes of trial. The President of the Local Union shall be chairperson of the Executive Board for purposes of the trial proceeding. No charging party or accused member or a witness may serve on the Executive Board in the conduct of disciplinary proceedings. Where the chairperson is unable to serve for any reason, the remaining members of the Local Union Executive Board shall designate one of their number to act as chairperson. On motion filed with the Local Union Executive Board, prior to trial, either party may ask that a particular Board member be excused from participating in the proceeding if he or she thinks that he or she cannot receive a fair trial before that Board member. The Executive Board shall give precedence to consideration of such motion. For purposes of trial, a quorum of the Executive Board shall consist of 3 of its members and a quorum is necessary throughout the trial. If an Executive Board member is absent during any portion of the trial, he or she may not participate further in the proceeding. All questions of order, procedure, and admissibility of evidence shall be decided by the chairperson, subject to being overruled by a majority vote of the Board upon motion by a member of the Board.

12. The accused and charging parties shall have a fair and impartial trial and shall have the right to present witnesses and other evidence in their behalf and to examine any witnesses. The accused shall have the right to refuse to testify. A charging or accused member may be assisted, advised, or represented by another member of the Local Union. At the commencement of the trial, the chairperson of the Board shall advise the parties of their rights as set forth above in this section and shall

read the charges to the accused. The accused shall then plead guilty or not guilty to each charge. In the event the accused elects not to appear or to respond, he or she shall be deemed to have entered a plea of not guilty and the trial shall proceed. Throughout the trial, there shall be a presumption of innocence in favor of the accused. The charging party shall present his or her case first and shall have the burden of proving the allegations contained in the charge. At the close of the charging party's case, either the accused or a member of the Executive Board shall have the right to move to dismiss the charges because the charging party has failed to present record evidence that establishes a violation of the Constitution, laws, or codes, Local Union bylaws, or rules.

13. A detailed written record of the trial proceedings shall be made and preserved and shall constitute trial record, provided that no fine, nor loss of membership rights or union office, shall be imposed unless a stenographic record and transcript are kept of the trial proceedings.

14. Upon the completion of the trial proceedings, the Executive Board shall, without undue delay, determine the innocence or guilt of the accused, based solely on the record evidence. The parties shall be advised of the decision in person or by certified mail. A verdict of guilty shall require a two-thirds majoirty vote of the Executive Board. If the decision is that of guilty, the Executive Board shall affix appropriate penalties in accordance with the provisions of the Constitution. Any member found guilty of any one or more of the charges against him or her may be censured, fined, suspended, and/or expelled, provided that such discipline shall be reasonable and fair and, provided further, that no discipline shall be imposed without stating with detailed specificity what the discipline is being imposed for.

15. The decision of the Executive Board shall become immediately operative unless stayed by the Local Union Executive Board or unless a stay is directed by the In-

ternational President following an appeal as set forth in Section 35(C).

16. Where it appears to the International President that a fair and impartial trial cannot be held before the Local Union Executive Board, the International President is authorized to assert original jurisdiction over the matter and appoint not more than six members from outside the Local Union to conduct the trial. The trial board so selected shall hear the matter within 180 days from the filing of the charge in accordance with the provisions of this Constitution as far as they are applicable and render judgment thereon as soon as practicable. The parties shall be advised of the decision by certified mail.

17. Decisions rendered pursuant to Subsection 16 shall become immediately operative unless a stay is directed by the International President following an appeal as set forth in Section 35(C).

(B) All charges against International officers shall be filed and tried by the International Exectuive Board in accordance with procedures set forth in Section 35(A) as far as they are applicable, and all decisions of the International Executive Board shall be immediately effective. The International President shall be empowered to direct that all charges filed against International Representatives be tried by the International Executive Board in the same manner. In case of such charges, the International President shall have the power to suspend the charged officer or International Representative prior to trial.

(C) 1. A member who has been found guilty of any offense as herein set forth, or the charging party when the accused has been acquitted, may appeal to the International President for redress, subject to a further appeal to the International Executive Board.

2. A notice of appeal to the International President shall be filed no later than 15 days from the date the adverse ruling is delivered to the appealing party; however, the International President, for good cause shown,

may extend the time within which a notice of appeal may be filed. A notice of appeal must briefly state why the party believes the decision should be reversed.

3. When an appeal is taken, the International President shall send a copy of the notice of appeal to the Local Union Executive Board involved and to the other party. Thereafter, the Local Union Executive Board shall immediately transmit to the International President, as well as the appealing party in the case, a full and complete copy of the trial record and charges, together with all other pertinent documents.

4. The appealing party may file a written statement in support of his or her appeal with the International President, stating wherein the decision being appealed is erroneous, within 45 days from the date the trial record is sent to the appealing party by the Local Union. The International President shall mail a copy of any such written statement to the other party. The other party may, within 30 days after such written statement has been sent to him or her, file a responsive statement. A request for an extension of the time limit set out herein must be filed with the International President before the expiration of the time limit in question, and the International President can, for good cause shown, extend the time limits.

5. The International President shall have authority to obtain any additional information in such form as he or she may prescribe from all parties concerned, in the event he or she believes such additional information is necessary in order to give full consideration to the appeal.

6. Upon failure of any party to comply with the foregoing requirements, the International President shall have the power to decide the appeal on the papers before him or her, and the party failing to discharge its obligations as set forth above shall forfeit all further rights of appeal from the action of the International President. After all statements have been or could have been filed, the International President shall consider the appeal and

render a decision giving his or her reasons therefor in writing, a copy of which shall be mailed to each party and the Local Union Executive Board.

7. Either party may appeal from the decision of the International President to the International Executive Board by filing a written notice of appeal with the International Secretary-Treasurer within 30 days of the date the decision has been mailed. The notice of appeal must briefly state why the party believes the International President's decision should be reversed.

8. The International Secretary-Treasurer shall immediately acknowledge receipt of the appeal and shall submit the charges, together with the trial record and all other records pertinent to the appeal, to the International Executive Board for review. The International Secretary-Treasurer shall immediately send a copy of the appeal to the involved Local Union Executive Board and the other parties.

9. The appealing party may file a written statement within 30 days after filing such appeal, setting out wherein said decision is erroneous, and the other party may, within 30 days after the appealing party's written statement has been sent to him or her by the International Secretary-Treasurer, file a responsive statement. It shall be the duty of the International Secretary-Treasurer to send a copy of the statements so filed to the parties and the Local Union Executive Board immediately after they have been filed in his or her office.

10. After the statements have been or could have been filed, the International Executive Board shall proceed to consider such appeal and either affirm or reverse such decision, giving its reason therefor in writing, a copy of which shall be sent to each party and the Local Union Executive Board involved. Issues which were not raised before the International President may be considered by the International Executive Board in its sole discretion.

Retirement Plan

(A) The Retail Clerks International Union shall maintain in effect the retirement plan and trust known as the "Retail Clerks International Union Retirement Plan for Employees" (hereafter referred to as "the Plan") covering eligible officers and employees of the International Union and its chartered bodies which became effective January 2, 1949, and has been amended from time to time thereafter.

(B) The terms of the Plan shall be those published in Section 38 of the version of the Constitution of the International Union published in the February-March, 1977 edition of the *Retail Clerks Advocate*, as amended from time to time as provided hereafter. The Plan and amendments thereto shall be published and provided Plan participants.

(C) The Plan shall be funded by the contributions of Plan participants provided for in the Plan and by allocation of such portion of the International per capita tax as may be necessary to fund the retirement benefits provided for in the Plan. The amount of such allocation shall be determined by the International Executive Board after consultation with the Plan's actuary. No contributions of the International Union may revert to it or its chartered bodies except upon satisfaction of all Plan liabilities and in accordance with the terms of the Plan and applicable laws and regulations.

(D) The Board of Trustees of the International Union shall constitute a Pension Board for the general administration of the Plan and shall have full authority to carry out the responsibilities and functions of the Pension Board specified in the Plan.

(E) The Plan may be amended in the same manner as the International Constitution provides for amendments to the Constitution, except that the Plan may be amended by a majority vote of a quorum of the Plan Pension Board in cases where it deems an amendment necessary

to qualify the Plan for tax exempt status, to conform to laws and regulations applicable to the Plan, or, within the limits of its fiduciary responsibility, to make improvements in the Plan's benefits. Such improvements shall be made after the Pension Board has obtained for such purposes such professional advice as it shall determine is necessary, including, but not limited to, the advice of the Plan's actuary.

SECTION 37

Health and Welfare Plan for
Retired Employees

(A) 1. All participants in the plan who are eligible to receive retirement benefits under the Retail Clerks International Union Retirement Plan for Employees and who have actually retired shall, subject to the conditions hereinafter set forth, receive such health and welfare benefits as are provided under the Retail Clerks International Union Health and Welfare Plan for Retired Employees herewith established.

2. Salaried officers and employees of the Retail Clerks International Union shall be eligible to receive health and welfare benefits upon their actual retirement, provided that, they have been active participants in the Retail Clerks International Union Retirement Plan for Employees for not less than 15 years or participants in the Retail Clerks International Union Retirement Plan for Employees up to the date of their actual retirement.

3. Salaried officers and employees of a chartered body shall be eligible to receive health and welfare benefits upon their actual retirement, provided that such chartered body has elected to participate in the Retail Clerks International Union Health and Welfare Plan for Employees by January 1, 1960, and maintains continuous participation therein according to the regulations governing such participation, and provided that such officer or employee of a chartered body has been an active participant in the Retail Clerks International Union Retirement Plan for Employees for not less than 15 years or has

been continuously covered by the International Union Health and Welfare Plan up to the time that such officer or employee actually retires.

4. Bodies hereinafter chartered, or not now employing participants in the pension program, who subsequently employ participants shall, as a condition of health and welfare coverage for its participating employees in the pension program, elect to come under this health and welfare program at the time of said earliest employee's participation in the pension program.

5. The International Executive Board shall review and be empowered to modify the conditions governing eligibility for receipt of health and welfare benefits for retirees as set forth in Section 37 of this Constitution during the interim of the 27th and 28th International Conventions.

(B) The cost of providing health and welfare benefits to eligible and actually retired employees shall be borne exclusively by an allocation of per capita tax as determined by the International Executive Board. Such per capita tax moneys allocated for this purpose shall be segregated and maintained in a separate fund and shall be accounted for in separate books and records of account. Periodic reports with the pertinent information shall be furnished to participating chartered bodies.

(C) The administration of the Retail Clerks International Union Health and Welfare Plan for Retired Employees shall be entrusted to the International Executive Board, which shall use the moneys so allocated exclusively for the purpose of providing health and welfare benefits for retired employees who are eligible for such benefits.

(D) 1. Salaried officers and employees of the International Union and of its chartered bodies, who have actually retired and who are eligible for health and welfare benefits, shall remain eligible for benefits under the International Union's Health and Welfare Plan for Retired Employees so long as they are eligible to continue to receive pension benefits under the retirement plan.

2. Participants in the plan who are permitted to continue their participation during an authorized leave of absence in the manner provided by the Retail Clerks International Union Retirement Plan for Employees may be eligible to receive health and welfare benefits upon their actual retirement subject to conditions set forth in such rules and regulations as may be promulgated from time to time by the International Executive Board.

(E) Surviving spouses and dependents (as may be defined by regulations of the International Executive Board) of actually retired officers and employees shall also be entitled to health and welfare benefits provided according to the terms and conditions of the International Union's Health and Welfare Plan for Retired Employees.

(F) Actually retired under this section shall mean that the officer or employee or the surviving spouse of an officer or employee is currently receiving or is qualified to immediately receive pension benefits from the Retail Clerks International Union Retirement Plan for Employees.

(G) The International Executive Board, in connection with administering the Health and Welfare Plan for Retired Employees, is empowered to obtain appropriate health and welfare benefits and make such changes and modifications therein as are consistent with the purpose of this section; to issue regulations governing the operation of such plan; to administer such plan either separately or as integrated in an appropriate way with the existing plan, and with doing all other things which are reasonably necessary to accomplish the purposes of this section.

SECTION 38

Retirement of Officers and Employees

(A) It is the purpose of this section to establish uniform requirements for the retirement of all officers and employees of the International Union and its chartered bodies, at the same time allowing a transition period con-

sidered essential to avoid both organizational dislocation and individual hardship.

(B) Accordingly, the following requirements are established to govern the International Union and its chartered bodies:

1. Except as provided in paragraph 3 below, no person may hold an elected office in the International Union or any of its chartered bodies beyond the first day of the month next following his or her 65th birthday.

2. Except as provided in paragraph 3 below, the International Union and its chartered bodies shall not commence or continue the employment of any person beyond the first day of the month next following his or her 65th birthday.

3. Any salaried officer or employee who, upon reaching age 65, needs three years or less additional service in order to complete ten years of credited service in the Retail Clerks International Union Retirement Plan for Employees shall not be barred by this section from completing ten years of credited service.

(C) This section shall not bar the employment of any person on a casual or per diem basis, as an independent contractor.

SECTION 39

Honorary Officers, Other Retired Officers, and Retired Employees

(A) In recognition of the contribution of International Presidents to the growth and progress of the International Union, International Presidents who retire or have retired while serving in that capacity shall be honored with the title of International President Emeritus. They shall constitute the honorary officers of the International Union.

(B) In a similar spirit of recognition, a Local Union may express appreciation to its President who retires or has retired while serving in that capacity by conferring a similar honor, as may be authorized by and in accord-

ance with the Local Union's bylaws. Those upon whom this honor is conferred shall constitute the honorary officers of their Local Unions.

(C) No officer or employee of the International Union or its chartered bodies receiving retirement benefits from the Retail Clerks International Union Retirement Plan for Employees shall perform any services for the International Union or its chartered bodies or represent them in any capacity except upon temporary assignment after due authorization and in a capacity not involving duties of a continuing nature, nor shall any such person receive any remuneration for services performed for the International Union or its chartered bodies, except for reasonable expenses incurred after due authorization, nor shall any such person have a voice or vote in the affairs of the International Union or its chartered bodies.

SECTION 40

Parliamentary Rules

The Conventions of the International Union, meetings of the International Executive Board, and meetings of all chartered bodies shall be conducted in accordance with common parliamentary procedure designed for the conduct of orderly and democratic meetings, unless otherwise provided.

SECTION 41

Constitutional Amendments

(A) This Constitution can be amended only at a duly constituted Convention of the International Union and by a two-thirds vote of all delegates present and voting or by a two-thirds vote in a referendum of the membership voting, at the request of not less than 25 Local Unions in good standing from not less than 15 states and/or provinces where there are Local Unions of the International Union; or upon recommendation of the International Ex-

ecutive Board subject to the provisions of this Constitution.

(B) All amendments to this Constitution adopted by the 27th International Convention, held in the city of Honolulu, Hawaii, on the 25th, 26th, 27th, 28th, and 29th days of July, 1977, shall be effective immediately upon adoption, unless otherwise specified in such amendments.

SECTION 42

Repeal

All laws or parts of laws previously enacted by this International Union and standing decisions of the International President, International Secretary-Treasurer, and International Executive Board in conflict herewith, are hereby repealed.

[Index Omitted]

EMPLOYER'S EXHIBIT 5

March 28, 1978

Ms. Jerry Ard, President
Firstbank Independent
Employees Association
Post Office Box 187
Seattle, Washington 98111

Dear Sister Ard:

Your application for a new charter from the Retail Clerks International Union has been duly received.

International Secretary-Treasurer Thomas G. Whaley, with my approval and pursuant to Sections 11(G) and 23(A) of the International Constitution, has issued a new charter for Financial Institution Employees of America, Local No. 1182, with an effective date of April 1, 1978, and Vice President Donald J. Hofer will present it to you.

The geographical jurisdiction of this Local Union shall encompass the city of Seattle, and the entire State of Washington or such area as may be determined from time to time by the Retail Clerks International Union.

The trade jurisdiction of Local Union No. 1182 shall encompass employees and other persons performing work or services in connection with, or related to banks, credit unions or other financial institutions and anyone performing any work or services for the International Union or its chartered bodies, or any other jurisdiction as may be determined from time to time by the Retail Clerks International Union.

Local Union No. 1182 should move to adopt bylaws for its operation as early as practicable. These bylaws shall set forth the name, geographical jurisdiction, and trade jurisdiction exactly as stated in this letter. To aid you in developing Local Union bylaws, I am enclosing a copy of the RCIU's Local Union Exemplary Bylaws.

Pending the adoption and approval of bylaws, the Local Union will operate in accordance with the International

Constitution. In this regard, I draw your attention to the enclosed copy of the RCIU Constitution, and most specifically to Sections 23 and 30.

International Secretary-Treasurer Whaley will be corresponding with you shortly with respect to official Local Union forms, supplies, and other materials necessary for the transaction of Local Union business, as well as advising you with regard to RCIU Local Union financial and administrative responsibilities.

Let me at this time wish you and the members of Local Union No. 1182 the very best and express our hope that you will successfully bring the full benefits of union membership to all persons within the Local Union's jurisdiction. If I or any International representative can be of any assistance to you, we will be most happy to do so.

With kind regards and best wishes, I am

Sincerely and fraternally,

/s/ William H. Wynn
International President

Enclosures

cc: Whaley
Hofer

WHW:NJS:cag

EMPLOYER'S EXHIBIT 6

FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION
P.O. Box 187
Seattle, Washington 98111

April 4, 1978

Dear FIEA Members:

On April 1, 1978, we were officially granted a charter from the Retail Clerks International Union. The issuance of the charter means that we are now a local of the RCIU. We are still FIEA, but now by action of your Executive Council, the initials stand for Financial Institutions Employees of America, and your local has a number which is # 1182—outside of those changes everything will remain the same.

By being a fully chartered autonomous local union, we are now eligible for full participation in RCIU and District Council policy formulations in addition to receiving the *full* assistance that the RCIU can provide.

Now that the final hurdle to becoming a chartered local union has been reached, we are looking forward to providing the full range of services available by virtue of affiliation. Even though we have a new name and number to go along with our initials we are still involved in the old battle of trying to negotiate a contract which hopefully with your continued support and the charter will be the extra push needed for a liveable settlement. Thank you all from the staff of FIEA, Local # 1182.

THE SAME UNION ONLY BETTER

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-2

MUST BE USED BY LABOR ORGANIZATIONS WITH $30,000 OR MORE IN RECEIPTS AND LABOR ORGANIZATIONS WHICH ARE UNDER TRUSTEESHIP

Labor-Management Reporting and Disclosure Act of 1959, as amended
and
Executive Order 11491, as amended

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

RECEIVED
AUG 2 1977
IN
WASHINGTON, D.C.

Jerry Ard, President
FirstBank Independent Employees' Assoc
P.O. Box 187
Seattle, WA 98107

1. FILE NUMBER: 008-295

2. Period covered — From: 5 1 — Thru: 4 30

3. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE:
CITY _____ COUNTY _____ STATE: WA

4. NAME OF LABOR ORGANIZATION (as shown on charter, constitution, etc.)
FIRSTBANK INDEPENDENT EMPLOYEES' ASSOCIATION

5. AFFILIATION
INDEPENDENT

6. ORGANIZATION (Local, Lodge, etc.)
NONE

7. DESIGNATION NUMBER
NONE

8. OFFICIAL MAILING ADDRESS (For mail to the organization)
(In care of) NAME OF PERSON
JERRY ARD, PRESIDENT
NUMBER AND STREET
P. O. BOX 187
BLDG. AND ROOM NUMBER, IF ANY
CITY SEATTLE, STATE WA

9. Is organization's record keeps at the official mailing address? Yes
If not, give address, including ZIP Code, where records are kept:
1331 3rd Ave, Jones Bldg. Rm 608, Seattle 98101

10. DURING WHAT ACCOUNTING PERIOD DID YOUR ORGANIZATION DIRECTLY:

	YES	NO
12. Have any payments in banks or other financial institutions been made on behalf of your organization?		XX
13. Have any properties without disbursement of cash been received in the administration of any business or enterprise which does not come within the definition of the term "labor organization" as set forth in the instructions?		XX
14. Have any property or any payments of any kind been received from any source other than dues or fees?		XX
15. Have any payments been made for any of the purposes listed in Item 14?		XX
16. A. Was the labor organization insured for any of the purposes listed in Item 14 during the reporting period?		XX
B. If "Yes," enter the maximum amount recovered for loss caused by any person	$	
17. Enter the date of your organization's fiscal accounting year end: Month April Year 1977		
18. Was any property sold or otherwise disposed of during the reporting period?		XX
19. Did your organization have any assets or liabilities at the beginning or end of the reporting period?		XX
20. Did your organization have any receipts or disbursements during the reporting period?		XX

If "Yes" to any item, attach an explanation. Use this form if sufficient; otherwise, attach additional sheets.

21. Initiation fee and dues. (Complete each line. Enter "None" or "Not Applicable" (N/A) where appropriate.) (If one rate applies, enter here (a). If more than one rate applies, enter Minimum (a) and Maximum (b).)

	(a)	(b)
(1) Initiation fee or fees required from new members	NA	
(2) Periodic dues required from transfer members	NA	NA
(3) Reinstatement fee charged: ☐ Yes ☒ No. If "Yes," give fees required	per	per
(4) Regular dues or fees or other periodic payments required (specify period, e.g., monthly, quarterly, etc.)	per	per
(5) Number of the regular labor organization (if any)	1.00	NO.

22. ADDITIONAL INFORMATION: If this is a terminal report, explain all changes in assets and liabilities.

SEE ATTACHED LETTER OF EXPLANATION

SEE LM-1A REPORT

LMSA, SEATTLE LABOR RELATIONS BOARD
AUG 23 1977
Docket No. 19-CA-
OFFICIAL EXHIBIT NO. E9
Date Rec'd
Date Rej'd
In the matter of Seattle Housing Authorities Case No. 19-CA-
Rep. for C. Hale

(If more than one person has knowledge of the facts with full information, please identify on separate sheet.)

I, the undersigned, duly authorized officers of the labor organization, declare under the applicable penalties of law that I have examined (including the information on all accompanying documents) and that to the best of my knowledge and belief, true, correct and complete.

23. Signature: [signature] Title: President Date signed: 7-27-77

24. Signature: Kathleen E Greene Title: Secretary Date signed: 7-27-77

Address (Number and Street): P.O. Box 187
City: Seattle State: WA Date: 98107
Telephone Number (Include Area Code): 206-624-2923

Address (Number and Street)
City State
Telephone Number (Include Area Code)

Page 1 of 3

193
EMPLOYER'S EXHIBIT 9

E9

ENTER AMOUNTS FOR LABS ONLY

FILL OUT SCHEDULES 1 THROUGH 14 BEFORE FILLING OUT STATEMENTS A THROUGH C

STATEMENT A—ASSETS AND LIABILITIES

ASSETS	FROM SCH #	Start of Reporting Period (A)		End of Reporting Period (B)		LIABILITIES Item	FROM SCH #	Start of Reporting Period (C)		End of Reporting Period (D)	
a) Cash on hand (Statement C, line 1)		$ 57	xx	$ 60	xx	32. Accounts Payable		$	xx	$	xx
b) Cash in banks (Statement C, line 2)		13,034	xx	19,208	xx	33. Loans Payable	8		xx		xx
c) Accounts Receivable			xx		xx	34. Mortgages Payable			xx		xx
d) Loans Receivable	1		xx		xx	35. Other Liabilities	4	710	xx	870	xx
e) U.S. Treasury Securities			xx		xx	36. TOTAL LIABILITIES		$ 710	xx	$ 870	xx
f) Other Investments	2	11,672	xx	12,510	xx	NET ASSETS					
g) Fixed Assets	5	4,111	xx	3,624	xx	37. Net Assets (Item 31 less Item 36)		$ 28,188	xx	$ 34,996	xx
h) Other Assets	3	24	xx	444	xx						
i) TOTAL ASSETS		$ 28,898	xx	$ 35,866	xx						

STATEMENT B—RECEIPTS AND DISBURSEMENTS

Item	CASH RECEIPTS	FROM SCH #	(A)	cts
38.	Dues		$ 103,250	xx
39.	Per Capita Tax			xx
40.	Fees			xx
41.	Fines			xx
42.	Assessments			xx
43.	Work Permits			xx
44.	On Behalf of Affiliates for Transmittal to Them			xx
45.	Sale of Supplies		85	xx
46.	Interest		1,493	xx
47.	Dividends			xx
48.	Rents			xx
49.	Loans Obtained	8		xx
50.	Sale of Investments and Fixed Assets	7	4,408	xx
51.	Repayment of Loans Made	1		xx
52.	From Members for Disbursement on Their Behalf			xx
53.	From Other Sources	13	569	xx
54.	TOTAL RECEIPTS (Items 38 through 53)		$ 109,805	xx

Item	CASH DISBURSEMENTS	FROM SCH #	(B)	cts
55.	Per Capita Tax		$	xx
56.	Fees, Fines, Assessments, etc.			xx
57.	To Affiliates of Funds Collected on Their Behalf			xx
58.	For Account of Affiliates			xx
59.	To Officers: (a) Gross $ 29,757	9		
	(b) Less Deductions 5,334		24,423	xx
60.	To Employees: (a) Gross $ 20,661	10		
	(b) Less Deductions 3,967		16,694	
61.	Office and Administrative Expense		34,463	
62.	Educational and Publicity Expense		517	
63.	Professional Fees		7,231	
64.	Benefits	11	1,729	
65.	Loans Made	1		
66.	Contributions, Gifts and Grants	12	67	xx
67.	Supplies for Resale		5,[illegible]	
68.	Purchase of Investments and Fixed Assets	6	3,[illegible]	
69.	Direct Taxes		9,[illegible]	
70.	Withholding Taxes		28[illegible]	
71.	On Behalf of Individual Members			
72.	Repayment of Loans Obtained	8		
73.	For Other Purposes	14	432	
74.	TOTAL DISBURSEMENTS (Items 55 through 73)		103,608	

STATEMENT C—CASH

	Cash at Start of Reporting Period	(A)	Cash at End of Reporting Period	(B)
1.	Cash on Hand	$ 57	1. Cash on Hand	8[illegible]
2.	Cash in Banks (Checking Accounts and Other Deposits)	13,034	2. Cash in Banks (Checking Accounts and Other Deposits)	19,208
	Total of Lines 1 and 2	13,091		
4.	Total Receipts from Line 54	109,805		
5.	Total of Lines 3 and 4	122,896		
6.	Total Disbursements from Line 74	103,608		
7.	Deduct Line 6 from Line 5	$ 19,288	3. Total of Lines 1 and 2	$ 19,268

If this amount entered in line 7, column (A) does not equal the amount entered in line 3, column (B), there is a discrepancy in your reporting. Correct this discrepancy or explain it in Item 22.

If more space is needed to list items in any of the schedules below, continue the list on additional sheets, using the same column headings used on the schedule. Enter the totals on the line provided for additional listings on the schedule.

SCHEDULE 1—LOANS RECEIVABLE

List below outstanding loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans, regardless of amount, made to business enterprises. (A)	Loans Outstanding at Start of the Period (B)	Loans Made During the Period (C)	Repayments Received During the Period: Cash (D)(1)	Repayments Received During the Period: Other Than Cash (D)(2)	Loans Outstanding at End of the Period (E)
1. (Name) (Purpose) (Security) (Terms of Repayment)	$	$	$	$	$
2. (Name) (Purpose) (Security) (Terms of Repayment)					
3. Totals from Additional Listings, if any.					
4. Totals of Loans not Listed above.					
5. Totals of Lines 1 through 4.	$	$	$	$	$

Enter the Totals from Line 5 in ..... Item 25, Column A. ..... Item 65 ..... Item 51 ..... Item 22 with Explanation ..... Item 25, Column [illegible]

SCHEDULE 2—INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES AND MORTGAGE INVESTMENTS

Description (A)	Amount (B)
Marketable Securities:	
1. Total Cost	$
2. Total Book Value	
3. Itemize each Marketable Security holding which is valued at over $1000 and which is also greater than 20% of the amount given in Line 2.	
(a)	
(b)	
(c)	
(d)	
Other Investments:	
4. Total Cost	
5. Total Book Value BANK BONDS	12,510
6. Itemize each Other Investment holding which is valued at over $1000 and which is also greater than 20% of the amount given in Line 5. Also itemize each subsidiary for which separate reports are attached.	
(a)	
(b)	
(c)	
(d) Totals from Additional Listings, if any	
7. Total of Lines 2 and 5.	$

Enter the Total from Line 7 in ..... Item 28, Column B

SCHEDULE 3—OTHER ASSETS

Description (A)	Book Value (B)
1. INDUSTRIAL INSURANCE DEPOSIT	$ 24
2. PREPAID PAYROLL TAXES	420
3.	
4.	
5. Total from Additional Listings, if any	
6. Total of Lines 1 through 5.	$ 444

Enter the Total of Line 6 in ..... Item 30, Column

SCHEDULE 4—OTHER LIABILITIES

Description (A)	Amount at End of Period (B)
1. PAYROLL TAXES WITH HELD	$ 870
2.	
3.	
4.	
5.	
6.	
7.	
8. Total from Additional Listings, if any	
9. Total of Lines 1 through 8.	$ 870

Enter the Total from Line 9 in ..... Item 35, Column

SCHEDULE 5—FIXED ASSETS

Description (A)	Cost or Other Basis (B)	Total Depreciation (If any) or Amount Expensed (C)	Book Value (D)	Fair Market Value (E)
1. Land (Give Location):	$		$	$
2. Totals from Additional Listings, if any				
3. Buildings (Give Location):		$		
4. Totals from Additional Listings, if any				
5. Automotive Equipment				
6. Office Furniture and Equipment	4,726	1,103	3,623	3,623
7. Other Fixed Assets				
8. Totals of Lines 1 through 7.	$ 4,726	$ 1,103	$ 3,623	$ 3,623

Enter the Total from Line 8, column D in ..... Item 29, Column B

SCHEDULE 6—PURCHASE OF INVESTMENTS AND FIXED ASSETS

Description of Assets (If land or buildings, give location) (A)	Cost (B)	Book Value (C)	Cash Paid (D)
1. BANK BOND	$ 4,408	$ 4,408	$ 4,408
2. BANK BOND REINVESTED INTEREST	838	838	838
3.			
4.			
5. Totals from Additional Listings, if any			
6. Totals of Lines 1 through 5.	$ 5,246	$ 5,246	$ 5,246

Enter the Total from Line 6, Column D in ..... Item 68

7. Assets Traded In on Assets Purchased:

Description of Asset Traded In (A)	Cost (B)	Book Value (C)	Trade-In Allowance (D)
(a)	$	$	$
(b)			

SCHEDULE 7—SALE OF INVESTMENTS AND FIXED ASSETS

Description of Assets Sold (If land or building, give location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Expended (E)
1. BANK BOND #326661	$ 2,000	$ 2,113	$ 2,113	$ 2,113
2. BANK BOND #233459	2,000	2,295	2,295	2,295
3.				
4. Total from Additional Listings, if any				
5. Totals of Lines 1 through 4.	$ 4,000	$ 4,408	$ 4,408	$ 4,408

Enter the Total from Line 5, Column E in ..... Item 50

SCHEDULE 8—LOANS PAYABLE

Name of Loans Payable at any time During the Reporting Period (A)	Terms for Repayment (B)	Balance at Start of Period (C)	Loans Obtained During Period (D)	Repayment of Loans During Period: Cash (E)(1)	Repayment of Loans During Period: Other Than Cash (E)(2)	Balance at End of Period (F)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Total from Additional Listings, if any						
6. Totals of Lines 1 through 5.		$	$	$	$	$

Enter the Totals from Line 6 in ..... Item 33, Column C ..... Item 49 ..... Item 72 ..... Item 72 with Explanation ..... Item 88, Column D

(A) NAME	(B) TITLE	(C) STS	(D) GROSS SALARY	(E)	(F) EXPENSES	(G)	(H) TOTAL
JERRY ARD	PRES	C	12,216		2,583		14,799
KATHLEEN E. KEENE	TREAS	C	10,431		1,078		11,509
SHARON NELSON	SEC	C			79		79
ISABEL CORN	VP	C			587		587
LYNDA GARMAN	VP	C			70		70
KAREN NIPGES	VP	P			159		159
DICK SMITH	VP	C			231		231
WENDA STEWART	VP	C			104		104
ROYANN BONNELL	EC*	C			140		140
GLADYS TELLESSEN	EC	C			509		509
LUCILLE WARD	EC	C			157		157
NORA DARROW	EC	C			48		48
JOANN POOLMAN	EC	C			662		662
CAROL STULL	EC	C			41		41
JULIE MC LEOD	EC	C			26		26
GRY BUSTAMANTE	EC	C			201		201
RONNIE DELP	EC	C			159		159
JOHAN HELLBERG	EC	C			55		55
WANDA MOODY	EC	C			4		4
SUZANNE DORN	EC	C			5		
DARLENE VAN SLYKE	EC	C			26		
MYRNA FEATHERLY	EC	C			90		
ZELDA CRICKETT	EC	C			8		
CLAUDIA MC LEOD	EC	C			2		
DARLENE BRITT	EC	C			2		
RAY RYDBERG	EC	C			2		
TED JOHNSON	EC	C			22		
JEAN OLSON	EC	C			2		
CECILIA YANG	EC	C			1		1
GLORIA KOSTER	EC	P			5		
LEE KLAWITTER	EC	P			52		5
TOTAL					7,110		29,757

*EXECUTIVE COUNCIL

14,799
11,509
26,308

ENTER AMOUNTS IN DOLLARS ONLY

SCHEDULE 9—LIST OF ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

	Name (List each list all persons who held office during the period) (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1.	SEE SCHEDULE			$	$	$	$	$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.	Total from Additional Listings, if any.							
11.	Totals of Lines 1 through 10.			$ 22,647	$	$ 7,110	$	$ 29,757

Code for Column C, "Status": past officer—P; continuing officer—C; new officer during this reporting period– N.
Enter the Total of Line 11, Column H in ..... Item 53(a)
NOTE: If any officer was not elected at a regular election in accordance with the constitution and bylaws, explain in Item 22.

SCHEDULE 10—DISBURSEMENTS TO EMPLOYEES

List below all employees who received more than $10,000 in gross salary, allowances, and other direct and indirect disbursements from this labor organization and any affiliate.

	(A)	Position (B)	Name of Affiliated Organization (if applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1.	JEANNE HARDY	B/A		$ 10,538	$	$ 902	$	$ 11,440
2.	NANCY J. HOLLAND	B/A		9,120		101		9,221
3.								
4.								
5.								
6.	Total from Additional Listings, if any							
7.	Total for all employees who, during the reporting period, received $10,000 or less gross salary, allowances, and other direct and indirect disbursements.							
8.	Totals of Lines 1 through 7.			$ 19,658	$	$ 1,003	$	$ 20,661

Enter the Total of Line 8, Column H in ..... Item 60(a)

SCHEDULE 11—BENEFITS

	Type of Benefit (A)	To Whom Paid (B)	Amount (C)
1.	SEE SCHEDULE		$
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.	Total from Additional Listings, if any		
11.	Total of Lines 1 through 10.		$ 1,729

Enter the Total from Line 11 in ..... Item 64

SCHEDULE 12—CONTRIBUTIONS, GIFTS AND [illegible]

	Type (A)	Amount (B)
1.	TEAMSTER'S HUTCH FUND	$ 5
2.	CONSULTANT'S GIFT	24
3.	CHRISTMAS GIFTS	38
4.		
5.		
6.		
7.		
8.		
9.		
10.	Total from Additional Listings, if any	
11.	Total of Lines 1 through 10.	$ 67

Enter the Total from Line 11 in ..... Item 66

SCHEDULE 13—OTHER RECEIPTS

	Other Sources (A)	Amount (B)
1.	UNIT REP SEMINAR	$ 465
2.	DONATIONS FOR NOTE PADS	104
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.	Total from Additional Listings, if any	
11.	Total of Lines 1 through 10.	$ 569

Enter the Total from Line 11 in ..... Item 53

SCHEDULE 14—OTHER DISBURSEMENTS

	Other Purposes (A)	Amount (B)
1.	PRE-PAID PAYROLL TAXES	$ 420
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.	Total from Additional Listings, if any	
11.	Total of Lines 1 through 10.	$ 420

Enter the Total from Line 11 in ..... Item 73

SCHEDULE 11 - BENEFITS

PENSION

JERRY ARD	284	
KATHLEEN E. KEENE	284	
JEANNE HARDY	287	
NANCY J. HOLLAND	48	
	903	903

MEDICAL INSURANCE

JERRY ARD	142	
KATHLEEN E. KEENE	66	
JEANNE HARDY	332	
NANCY J. HOLLAND	286	
	626	626
		1,729

SCHWEPPE, DOOLITTLE, KRUG, TAUSEND,
BEEZER & BEIERLE
Attorneys and Counselors at Law
1800 Peoples National Bank Building
1415 Fifth Avenue
Seattle, Washington 98171

Telephone
(208) 223-1600

July 13, 1977

Stanford & Munko
Certified Public Accountants
1910 Fairview Avenue East
Seattle, Washington 98102

Gentlemen:

In re:

Firstbank Independent Employees
Association

Pursuant to a request by Kathy Keene, Treasurer of the FIEA, I wish to inform you that as of April 30, 1977:

1. There were no outstanding judgments either receivable or payable;
2. The union is involved in two items of litigation at the present time, both of which involve the challenge by Seattle-First National Bank to an award of an arbitrator. No liability to the union will be forthcoming from either item of litigation, because the arbitrator's awards were upholding the rights of employees; and
3. We are aware of no agreement, obligations or any other actions for which the union is liable, either contingently or otherwise, other than those arising in the normal course of business and of which you already have examined the records.

We do not undertake to advise you of changes after July 13, 1977, which may be brought to our attention.

This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975); without limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraph 2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement and the accompanying Commentary (which is an integral part of the Statement).

Very truly yours,

SCHWEPPE, DOOLITTLE, KRUG,
TAUSEND & BEEZER

By /s/ Thomas H. Grimm
THOMAS H. GRIMM

THG:ly

cc: Ms. Kathleen E. Keene

FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS

(On a Cash Basis)

YEAR ENDED APRIL 30, 1977

CONTENTS

	Page
Accountants' report	2
Balance sheet	3
Statement of cash receipts, expenditures and members' equity	4
Statement of source and application of funds	5
Notes to financial statements	6

JAMES R. STANFORD C.P.A.
ANTHONY MUNKO, C.P.A.

STANFORD & MUNKO
Certified Public Accountants
1910 Fairview East
Seattle, Washington 98102
324-4400

Executive Council and Members
Firstbank Independent Employees Association
Seattle, Washington

We have examined the balance sheet arising from cash transactions of Firstbank Independent Employees Association as of April 30, 1977 and 1976 and the related statements of cash receipts, expenditures and members' equity and source and application of funds for the years then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As stated in Note 1, the Association's policy is to prepare its financial statements on the basis of cash receipts and expenditures; consequently, our examination was limited to tests applicable to revenue collected and expenses paid. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles. Furthermore, the majority of dues received are remitted by Seattle First National Bank from dues withheld from members and it was impractical for us to extend our tests beyond accounting for amounts remitted.

In our opinion, the accompanying financial statements present fairly the financial position of the Association arising from cash transactions as of April 30, 1977 and

1976 and the revenue collected and expenses paid during the years then ended, on the basis of accounting described in Note 1, which basis has been applied in a manner consistent with that of the preceding year.

/s/ Stanford & Munko
Certified Public Accountants

July 13, 1977

FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION

BALANCE SHEET

(On a Cash Basis)

ASSETS

	APRIL 30,	
	1977	1976
CURRENT ASSETS:		
Cash on hand and in banks	$19,287	$13,091
Prepaid payroll taxes	420	
Total current assets	$19,707	$13,091
INVESTMENTS (Note 2)	12,510	11,672
OTHER ASSETS (At cost):		
Office furniture and equipment, less accumulated depreciation of $1,103 in 1977; $615 in 1976	3,624	4,111
Industrial insurance deposit	24	24
	$35,865	$28,898

LIABILITIES AND MEMBERS' EQUITY

CURRENT LIABILITIES:		
Payroll taxes withheld	$ 870	$ 710
MEMBERS' EQUITY	34,995	28,188
	$35,865	$28,898

See notes to financial statements.

FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION

STATEMENT OF CASH RECEIPTS, EXPENDITURES AND MEMBERS' EQUITY

	YEAR ENDED APRIL 30,	
	1977	1976
RECEIPTS:		
Dues and donations, less refunds of $286 in 1977; $52 in 1976	$102,964	$103,195
Interest income	1,492	672
Seminar income	465	317
Miscellaneous sales	189	
	$105,110	$104,184
EXPENDITURES:		
Salaries	$ 42,304	$ 34,216
Payroll taxes	3,391	3,157
Staff Welfare	1,729	597
Negotiations	964	1,246
Council meetings	3,868	4,214
Other meetings	8,790	6,773
Legal	3,693	21,401
Other professional fees	3,538	2,331
Insurance	579	546
Public relations	398	70
Supplies and bulletins	10,575	11,120
Travel	4,089	3,213
Postage	4,440	5,409
Rent	2,772	2,671
Telephone	6,116	6,220
Educational seminars	517	220
Depreciation	487	440
Miscellaneous	53	49
	$ 98,303	$103,893
EXCESS OF CASH RECEIPTS OVER EXPENDITURES	$ 6,807	$ 291
Members' equity at beginning of year	28,188	27,897
Members' equity at end of year	$ 34,995	$ 28,188

See notes to financial statements.

FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION
STATEMENT OF SOURCE AND APPLICATION OF FUNDS

	YEAR ENDED APRIL 30,	
	1977	1976
FUNDS PROVIDED:		
Excess of cash receipts over expenditures	$ 6,807	$ 291
Add back items which did not represent an expenditure of funds:		
Depreciation	487	440
Increase in payroll taxes withheld	160	317
	$ 7,454	$ 1,048
FUNDS USED:		
Purchase of Firstbank bonds	$	$ 4,000
Reinvested interest in income	838	357
Prepayment of payroll taxes	420	
Additions to office furniture and equipment		2,447
	$ 1,258	$ 6,804
INCREASE (DECREASE) IN CASH	$ 6,196	$(5,756)
Cash on hand at beginning of year	13,091	18,847
Cash on hand at end of year	$19,287	$13,091

See notes to financial statements.

FIRSTBANK INDEPENDENT EMPLOYEES ASSOCIATION

NOTES TO FINANCIAL STATEMENTS APRIL 30, 1977

NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

The accounts of the Association are maintained on a cash basis, consequently, revenues and related assets are recognized when received rather than when earned, and expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the accompanying financial statements do not include dues receivable from members or expenses payable at April 30, 1977.

The Association provides for depreciation of its office furniture and equipment, using the straight-line method over an estimated useful life of 8 years.

NOTE 2—INVESTMENTS:

The Association's investments at April 30, 1977 are comprised of the following:

	Date purchased	Maturity date	Interest rate	Face Amount	Interest accrued to April 30, 1977
Firstbank bonds:					
#326597	3/10/75	6/10/77	6 %	$ 2,221.39	$ 33.57
382052	9/15/75	6/8/77	5½	2,142.32	29.66
413631	1/12/77	1/12/79	5½	3,738.16	51.75
Puget Sound Mutual Savings Bank Certificate of deposit	5/17/76	5/17/77	6½	4,407.84	286.27
				$12,509.71	$401.25

Since the accounts of the Association are kept on a cash basis, interest earned on its investments is recorded when received. Accordingly, accrued interest referred to above was not recognized in the accompanying financial statements as of April 30, 1977.

NOTE 3—LEASE COMMITMENT:

The Association is obligated, under the terms of a lease which expires on August 31, 1977, for rental of its office premises at $235.00 per month.

...Department of Labor
...Management Services Administration
...Washington, D.C. 20216

Form Approved
Office of Management & Budget
No. 44R-1132

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-2

MUST BE USED BY LABOR ORGANIZATIONS WITH $30,000 OR MORE IN RECEIPTS AND LABOR ORGANIZATIONS WHICH ARE UNDER TRUSTEESHIP

Labor-Management Reporting and Disclosure Act of 1959, as amended
and
Executive Order 11491, as amended

000056

FILE

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

WILLIAM H. WYNN
~~PETER L HALL~~
RETAIL CLERKS AFL-CIO
NHQ
1775 K ST N W SUFFRIDGE BLDG
WASHINGTON DC 20006

000-05n
22 184 2

0L2

1. FILE NUMBER: 000056

2. Period covered

	MO	DAY	YR
From	5	1	76
Thru	4	30	77

3. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE:
CITY _____ COUNTY International Union STATE _____

4. NAME OF LABOR ORGANIZATION *(as shown on charter, constitution, etc.)*
Retail Clerks International Association

5. AFFILIATION
Not Applicable

6. DESIGNATION *(Local, Lodge, etc.)*
N/A

7. DESIGNATION NUMBER
N/A

8. OFFICIAL MAILING ADDRESS *(For mail to the organization)*
(In care of) NAME OF PERSON
William H. Wynn
NUMBER AND STREET
1775 K Street, N.W.
BLDG. AND ROOM NUMBER, IF ANY
Suffridge Building
CITY Washington STATE D.C. ZIP CODE 20006

Are organization records kept at the official mailing address? ☒ Yes ☐ No
If "No," show address including ZIP Code in Item 22.

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION DIRECTLY OR INDIRECTLY:

	YES	NO
10. Have any accounts in banks or other financial institutions held in a name other than that of your organization?	☐	☒
11. Liquidate or reduce any liabilities without disbursement of cash?	☐	☒
12. Create or participate in the administration of any business enterprises or other organizations which met the definition of a "subsidiary organization" as that term is defined in the instructions on page 2?	☐	☒
13. Acquire any goods or property in any manner other than by purchase or dispose of any goods or property in any manner other than by sale?	☒	☐
14. Create or participate in the administration of a trust or other fund or organization, a primary purpose of which is to provide benefits for members or their beneficiaries, as defined by section 3(l) of the Act?	☒	☐
15. Discover any loss or shortage of funds or other property?	☐	☒

(If the answer to any of the above questions is "Yes," provide details in Item 22. See specific instructions for items answered "Yes.")

16. A. Was the labor organization insured by a fidelity bond during the reporting period? ☒ Yes ☐ No
B. If "Yes," enter the maximum amount recoverable for loss caused by any person $ 500,000

17. Enter the date of your organization's next regular election of officers.
Month July Year 1977

AS OF THE END OF THE REPORTING PERIOD:

18. Were any assets pledged as security or encumbered in any other way? ☐ Yes ☒ No

19. Did your organization have any contingent liabilities? ☐ Yes ☒ No
(If the answer to Item 18 or 19 is "Yes," provide details in Item 22.)

20. Did your organization have any changes in its constitution and by-laws (other than changed dues amounts) or in practices described in statements submitted with Form LM-1 or Form LM-1A since your organization filed Form LM-1 or most recently updated it by filing a Form LM-1A? ☐ Yes ☒ No
If "Yes," attach an updated Form LM-1A to this report, with required documents.

21. List fees and dues required. *(Complete each line. Enter "None" or "Not Applicable" as appropriate.)*

	(A) If one rate applies, enter here	(B) If more than one rate applies, enter here Minimum	Maximum
(1) Initiation fee or fees required from new members	$ 2.50	$ N/A	$ N/A
(2) Fees other than dues required from transfer members	$ N/A	$ N/A	$ N/A
(3) Are work permits issued? ☐ Yes ☒ No If "Yes," give fees required	$ ____ per ____	$ ____ per ____	$ ____ per ____
(4) Regular dues or fees or other periodic payments required to remain a member of the reporting labor organization *(per year, mo., etc.)*	$ 2.60 per mo.	$ ____ per ____	$ ____ per ____

22. ADDITIONAL INFORMATION *(If this is a terminal report, see Section XII of the Instructions)*

Item Number

C

NATIONAL LABOR RELATIONS BOARD
OFFICIAL EXHIBIT NO. 5-10
Docket No. 5-AC-22
SEE ATTACHED
Disposition
In the matter of Date 7-27-78
Received
Identified
Reporter

RECEIVED
U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SEP 14 1977
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

(If more space is needed, attach additional sheets with further statement, properly identified.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law,* that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signator, and is, to the best of the undersigned's knowledge and belief, true, correct, and complete.

15. SIGNED: [signature] PRESIDENT *(If other title, cross out and write in correct title above. Explain in Item 22.)*
at: Washington D.C. on: 9/20/77
City State Date
(202) 223-3111
Telephone Number *(Include Area Code)*

16. SIGNED: [signature] TREASURER *(If other title, cross out and write in correct title above. Explain in Item 22.)*
at: Washington D.C. on: 9/20/77
City State Date
(202) 223-3111
Telephone Number *(Include Area Code)*

*See section on "Penalties" in accompanying instructions.

Form LM-2 (Rev. 1975) Page 1

COPY 2

000056

EMPLOYER'S EXHIBIT 10

211

ENTER AMOUNTS IN DOLLARS ONLY

FILL OUT SCHEDULES 1 THROUGH 14 BEFORE FILLING OUT STATEMENTS A THROUGH C

STATEMENT A—ASSETS AND LIABILITIES

Item	ASSETS	FROM SCH #	Start of Reporting Period (A)	cts	End of Reporting Period (B)	cts
23.	(a) Cash on hand (Statement C, lines 1)		$ 110,887	XX	$ 1,100	XX
	(b) Cash in banks (Statement C, lines 2)		2,552,942	XX	1,658,278	XX
24.	Accounts Receivable		397,794	XX	416,504	XX
25.	Loans Receivable	1	472,402	XX	559,111	XX
26.	U.S. Treasury Securities		121,000	XX	121,000	XX
27.	Mortgage Investments		55,779	XX	53,253	XX
28.	Other Investments	2	2,804,460	XX	2,941,399	XX
29.	Fixed Assets	5	10,022,868	XX	11,290,086	XX
30.	Other Assets	3	438,947	XX	431,421	XX
31.	TOTAL ASSETS		$16,977,079	XX	$17,472,152	XX

Item	LIABILITIES	FROM SCH #	Start of Reporting Period (C)	cts	End of Reporting Period (D)	cts
32.	Accounts Payable		$ 121,018	XX	$ 156,560	XX
33.	Loans Payable	8	124,612	XX	24,685	XX
34.	Mortgages Payable		2,445,553	XX	2,345,073	XX
35.	Other Liabilities	4	744,991	XX	920,561	XX
36.	TOTAL LIABILITIES		$3,436,174	XX	$3,446,882	XX
	NET ASSETS					
37.	Net Assets (Item 31 less Item 36)		$13,540,905	XX	$14,025,270	XX

STATEMENT B—RECEIPTS AND DISBURSEMENTS

Item	CASH RECEIPTS	FROM SCH #	(A)	cts
38.	Dues		$ - 0 -	XX
39.	Per Capita Tax		15,843,981	XX
40.	Fees		556,821	XX
41.	Fines		- 0 -	XX
42.	Assessments		- 0 -	XX
43.	Work Permits		- 0 -	XX
44.	On Behalf of Affiliates for Transmittal to Them		638,188	XX
45.	Sale of Supplies		54,758	XX
46.	Interest		186,491	XX
47.	Dividends		111,845	XX
48.	Rents		352,046	XX
49.	Loans Obtained	8	25,020	XX
50.	Sale of Investments and Fixed Assets	7	387,999	XX
51.	Repayment of Loans Made	1	286,300	XX
52.	From Members for Disbursement on Their Behalf		1,385,340	XX
53.	From Other Sources	13	7,267,692	XX
54.	TOTAL RECEIPTS (Items 38 through 53)		$27,096,481	XX

Item	CASH DISBURSEMENTS	FROM SCH #	(B)	cts
55.	Per Capita Tax		$1,363,380	XX
56.	Fees, Fines, Assessments, etc.		- 0 -	XX
57.	To Affiliates of Funds Collected on Their Behalf		623,705	XX
58.	For Account of Affiliates		242,081	XX
59.	To Officers: (a) Gross $1,256,339	9		
	(b) Less Deductions 400,957		855,382	XX
60.	To Employees: (a) Gross $7,210,904	10		
	(b) Less Deductions 1,880,861		5,330,043	XX
61.	Office and Administrative Expense		851,606	XX
62.	Educational and Publicity Expense		289,073	XX
63.	Professional Fees		98,719	XX
64.	Benefits	11	2,460,546	XX
65.	Loans Made	1	373,009	XX
66.	Contributions, Gifts and Grants	12	601,135	XX
67.	Supplies for Resale		88,614	XX
68.	Purchase of Investments and Fixed Assets	6	1,887,944	XX
69.	Direct Taxes		332,489	XX
70.	Withholding Taxes		1,722,967	XX
71.	On Behalf of Individual Members		1,365,767	XX
72.	Repayment of Loans Obtained	8	124,944	XX
73.	For Other Purposes	14	9,482,023	XX
74.	TOTAL DISBURSEMENTS (Items 55 through 73)		$28,100,932	XX

STATEMENT C—CASH

	Cash at Start of Reporting Period	(A)
1.	Cash on Hand	$ 110,887
2.	Cash in Banks (Checking Accounts and Other Deposits)	2,552,942
3.	Total of Lines 1 and 2	2,663,829
4.	Total Receipts from Line 54	27,096,481
5.	Total of Lines 3 and 4	29,760,310
6.	Total Disbursements from Line 74	28,100,932
7.	Deduct Line 6 from Line 5	$ 1,659,378

	Cash at End of Reporting Period	(B)
1.	Cash on Hand	$ 1,100
2.	Cash in Banks (Checking Accounts and Other Deposits)	1,658,278
3.	Total of Lines 1 and 2	$1,659,378

If the amount entered in line 7, column (A) does not equal the amount entered in line 3, column (B), there is a discrepancy in your reporting. Correct the discrepancy or explain it in Item 22.

If more space is needed to list items in any of the schedules below, continue the list on additional sheets, using the same column headings used on the schedule and enter the totals on the line provided for additional listings on the schedule.

SCHEDULE 1—LOANS RECEIVABLE

List below outstanding loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans, regardless of amount, made to business enterprises. (A)	Loans Outstanding at Start of the Period (B)	Loans Made During the Period (C)	Repayments Received During the Period: Cash (D)(1)	Repayments Received During the Period: Other Than Cash (D)(2)	Balance at the End of the Period (F)
1. (Name) Schedule attached	$472,402	$373,009	$286,300	- 0 -	$559,111
(Purpose)					
(Security)					
(Terms of Repayment)	$	$	$	$	$
2. (Name)					
(Purpose)					
(Security)					
(Terms of Repayment)					
3. Totals from Additional Listings, if any					
4. Totals of Loans not Listed above.					
5. Totals of Lines 1 through 4.	$472,402	$373,009	$286,300	$ - 0 -	$559,111

Enter the Totals from Line 5 in ..... Item 25, Column A. ..... Item 65 ..... Item 51 ..... Item 22 with Explanation ..... Item 25, Column B

ENTER AMOUNTS IN DOLLARS ONLY

SCHEDULE 2—INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES AND MORTGAGE INVESTMENTS

Description (A)	Amount (B)
Marketable Securities:	
1. Total Cost	$ 1,241,686
2. Total Book Value	1,241,686
3. Itemize each Marketable Security holding which is valued at over $1000 and which is also greater than 20% of the amount given in Line 2.	
(a) Letman Corporation	276,166
(b) Fund for U.S. Covermment	
(c) Securities	618,988
(d)	
Other Investments:	
4. Total Cost	1,699,713
5. Total Book Value	1,699,713
6. Itemize each Other Investment holding which is valued at over $1000 and which is also greater than 20% of the amount given in Line 5. Also itemize each subsidiary for which separate reports are attached.	
(a) National Bank of Wash Trust Fund	787,835
(b) Union 1st National Bank of Wash	
(c) Trust Fund	811,878
(d) Total from Additional Listings, if any	
7. Total of Lines 2 and 5.	$ 2,941,399

Enter the Total from Line 7 in ..... Item 28, Column B

SCHEDULE 3—OTHER ASSETS

Description (A)	Book Value (B)
1. Schedule attached	$ 431,421
2.	
3.	
4.	
5. Total from Additional Listings, if any	
6. Total of Lines 1 through 5.	$ 431,421

Enter the Total of Line 6 in ..... Item 30, Column B

SCHEDULE 4—OTHER LIABILITIES

Description (A)	Amount at End of Period (B)
1. RCIA Pension Fund	$ 590,466
2. Central Division Convention Fund	95,778
3. J.T.H. Scholarship Fund	100
4. Accounts Payable Affiliates	64,398
5. From Affiliates to be Forwarded	58,491
6. Payroll Deductions Payable	111,329
7.	
8. Total from Additional Listings, if any	
9. Total of Lines 1 through 8.	$ 920,561

Enter the Total from Line 9 in ..... Item 35, Column B

SCHEDULE 5—FIXED ASSETS

Description (A)	Cost or Other Basis (B)	Total Depreciation (If any) or Amount Expensed (C)	Book Value (D)	Fair Market Value (E)
1. Land (Give Location): 18th & K Street, N.W. Wash, D.C.	$ 2,387,501		$ 2,387,501	$ 2,387,501
RCIA Conference Center, Hollywood, Md.	275,000		275,000	275,000
Totals from Additional Listings, if any	- 0 -		- 0 -	- 0 -
3. Buildings (Give Location): 18th & K Street, N.W. Wash D.C.	6,289,452	$ - 0 -	6,289,452	6,289,452
RCIA Conference Center, Hollywood, Md.	1,375,550	- 0 -	1,375,550	1,375,550
4. Totals from Additional Listings, if any	- 0 -	- 0 -	- 0 -	- 0 -
5. Automotive Equipment	47,774	11,108	36,666	36,666
6. Office Furniture and Equipment	1,327,962	511,542	816,420	816,420
7. Other Fixed Assets Homes on transfer	109,497	- 0 -	109,497	109,497
8. Totals of Lines 1 through 7.	$ 11,812,736	$ 522,650	$ 11,290,086	$ 11,290,086

Enter the Total from Line 8, column D in ..... Item 29, Column B

SCHEDULE 6—PURCHASE OF INVESTMENTS AND FIXED ASSETS

Description of Assets (If land or buildings, give location) (A)	Cost (B)	Book Value (C)	Cash Paid (D)
1. Schedule Attached	$ 1,887,944	$ 1,887,944	$ 1,887,944
2.			
3.			
4.			
5. Totals from Additional Listings, if any			
6. Totals of Lines 1 through 5.	$ 1,887,944	$ 1,887,944	$ 1,887,944

Enter the Total from Line 6, Column D in ..... Item 58

7. Assets Traded in on Assets Purchased: Description of Asset Traded In (A)	Cost (B)	Book Value (C)	Trade-In Allowance (D)
(a) NONE	$ - 0 -	$ - 0 -	$ - 0 -
(b)			

SCHEDULE 7—SALE OF INVESTMENTS AND FIXED ASSETS

Description of Assets Sold (If land or building, give location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Received (E)
1. Schedule Attached	$ 426,522	$ 414,439	$ 387,999	$ 387,999
2.				
3.				
4. Total from Additional Listings, if any				
5. Totals of Lines 1 through 4.	$ 426,522	$ 414,439	$ 387,999	$ 387,999

Enter the Total from Line 5, Column E in ..... Item 50

SCHEDULE 8—LOANS PAYABLE

Source of Loans Payable at any Time During the Reporting Period (A)	Terms for Repayment (B)	Balance at Start of Period (C)	Loans Obtained During Period (D)	Repayment of Loans During Period: Cash (E)(1)	Repayment of Loans During Period: Other Than Cash (E)(2)	Balance at End of Period (F)
1. Union 1st Nat'l Bank	monthly	$ 124,612	$ - 0 -	$ 124,612	$ - 0 -	$ - 0 -
Xerox Corporation	monthly		25,020	332		24,688
3.						
4.						
5. Total from Additional Listings, if any						
6. Totals of Lines 1 through 5.		$ 124,612	$ 25,020	$ 124,944	$ - 0 -	$ 24,688

Enter the Totals from Line 6 in ..... Item 33, Column C ..... Item 49 ..... Item 72 ..... Item 22 with Explanation ..... Item 33, Column D

ENTER AMOUNTS IN DOLLARS ONLY

SCHEDULE 9—LIST OF ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

Name (Important: List all persons who held office during the period) (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1. Schedule Attached			$907,785.94	$ 96,618.00	$229,833.53	$ 22,101.97	$1,256,339.44
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10. Total from Additional Listings, if any.							
11. Totals of Lines 1 through 10.			$907,785.94	$ 96,618.00	$229,833.53	$ 22,101.97	$1,256,339.44

Code for Column C, "Status": past officer—P; continuing officer—C; new officer during this reporting period—N.
Enter the Total of Line 11, Column H in ..... Item 59(a)
NOTE: If any officer was not elected at a regular election in accordance with the constitution and bylaws, explain in Item 22.

SCHEDULE 10—DISBURSEMENTS TO EMPLOYEES

List below employees who received more than $10,000 in gross salary, allowances, and other direct and indirect disbursements from this labor organization and any affiliate.

(A)	Position (B)	Name of Affiliated Organization (If applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1. Schedule Attached			$4,840,562.73	$672,871.11	$1,170,844.87	$ 715.52	$6,684,994.23
2.							
3.							
4.							
5.							
6. Total from Additional Listings, if any							
7. Total for all employees who, during the reporting period, received $10,000 or less gross salary, allowances, and other direct and indirect disbursements.			459,635.78	28,436.34	37,837.66	- 0 -	525,909.78
8. Totals of Lines 1 through 7.			$5,300,198.51	$701,307.45	$1,208,682.53	$ 715.52	$7,210,904.01

Enter the Total of Line 8, Column H in ..... Item 60(a)

SCHEDULE 11—BENEFITS

Type of Benefit (A)	To Whom Paid (B)	Amount (C)
1. Funeral Benefits	Beneficiaries	$ 189,500
2. Health & Welfare	Life Ins. Co.	259,825
3. Annuity Plan	Life Ins. Co.	175,213
4. Annuity	Beneficiary	607
5. Strike & Defense	Local Unions	1,661,317
6. Health & Welfare		
7. Retired Employees	Life Ins. Co.	174,084
8.		
9.		
10. Total from Additional Listings, if any		
11. Total of Lines 1 through 10.		$2,460,546

Enter the Total from Line 11 in ..... Item 64

SCHEDULE 12—CONTRIBUTIONS, GIFTS AND GRANTS

Type (A)	Amount (B)
1. Charitable	$ 40,173
2. Educational	13,445
3. Other	57,390
4. Active Ballot Club	488,875
5. International Affairs	1,250
6.	
7.	
8.	
9.	
10. Total from Additional Listings, if any	
11. Total of Lines 1 through 10.	$ 601,135

Enter the Total from Line 11 in ..... Item 66

SCHEDULE 13—OTHER RECEIPTS

Other Sources (A)	Amount (B)
1. Schedule Attached	$ 7,267,692
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from Additional Listings, if any	
11. Total of Lines 1 through 10.	$ 7,267,692

Enter the Total from Line 11 in ..... Item 53

SCHEDULE 14—OTHER DISBURSEMENTS

Other Purposes (A)	Amount (B)
1. Schedule Attached	$ 9,439,023
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from Additional Listings, if any	
11. Total of Lines 1 through 10.	$ 9,439,023

Enter the Total from Line 11 in ..... Item 71

R.C.I.A.—LM-2

Item #22—Additional Information

Item #	
13	Fully depreciated Office Furniture and Equipment was disposed of and written off. Included in the cost of $12,764. Written off was an accounting machine, which had a purchase price of $8131. This machine was junked. Cost and accumulated depreciation were adjusted by $120,642, due to a personal property tax audit.
14	RCIA Retirement Plan for Employees WP043020 RCIA Health & Welfare Plan for Retired Employees WP214872 RCIA Health & Welfare Plan (Fully Insured) WP043019 RCIA Death Benefit Plan (Self Insured) WP097196 RCIA Employees Annuity Trust WP254653 James A. Suffridge—RCIA Scholarship Fund James T. Housewright—RCIA Scholarship Fund
18	1st Trust Mortgages on Real Estate and Collateral Note on Xerox Equipment
Schedule 9 & 10	Leased and owned automobiles are also used for personal business.

R.C.I.A. LM-2
Year Ended April 30, 1977
Schedule 1—Loans Receivable

Name	A Purpose	Repayment Terms	B Balance Beginning Period	C Loans Made During Period	D Repayments	E Balance End of Period
Local 548—New Orleans, Louisiana	P.C.T. Advance	Monthly Payment	$ 2,731.84	$ —0—	$ 2,400.00	$ 331.84
Local 445—Louisville, Kentucky	Financial Assistance	Monthly Payment	9,006.60	—0—	9,006.60	—0—
Local 1435—Lynn, Massachusetts	P.C.T. Advance and Financial Assistance	Monthly Payment	56,416.09	—0—	2,400.00	54,016.09
Local 500—Montreal, Canada	P.C.T. Advance	Monthly Payment	15,761.13	—0—	—0—	15,761.13
Local 1100—San Francisco, California	Financial Assistance	Monthly Payment	144,385.50	260,827.26	93,636.00	311,576.76
Robert E. Gay	1st Trust	Monthly Payment	3,097.06	—0—	3,097.06	—0—
Harvey's Incorporated	1st Trust	Monthly Payment	94,200.00	—0—	20,400.00	73,800.00
Local 187—Cheyenne, Wyoming	Strike Fund Advance	Lump Payment	5,000.00	—0—	5,000.00	—0—
Local 1636—Tampa, Florida	P.C.T. Advance	Monthly Payment	100.00	—0—	100.00	—0—
Local 480—Honolulu, Hawaii	Financial Assistance	Monthly Payment	1,000.00	—0—	1,000.00	—0—
Local 1001—Seattle, Washington	P.C.T. Advance	Monthly Payment	104,917.07	—0—	55,000.00	49,917.07
Local 725—Indianapolis, Indiana	Strike Fund Advance	Lump Payment	10,000.00	—0—	—0—	10,000.00

Local 150—New York, New York	Financial Assistance	Monthly Payment	9,200.00	—0—	9,200.00	—0—
Local 1441—Muncie, Indiana	P.C.T. Advance	Monthly Payment	4,020.82	—0—	2,800.00	1,220.82
Local 663—El Paso Texas	P.C.T. Advance	Monthly Payment	3,665.59	9,053.94	3,665.59	9,053.94
Local 1188—Coos Bay, Oregon	P.C.T. Advance	Monthly Payment	5,855.66	—0—	4,500.00	1,355.66
Local 991—Missoula, Montana	P.C.T. Advance	Monthly Payment	3,044.76	—0—	3,044.76	—0—
Local 1325—Fall River, Massachusetts	Strike Fund Advance	Lump Payment	—0—	1,000.00	1,000.00	—0—
Local 57—Great Falls, Montana	Strike Fund Advance	Lump Payment	—0—	700.00	—0—	700.00
Canadian Division Office	Organizing Fund	Lump Payment	—0—	1,000.00	—0—	1,000.00
Local 57—Great Falls, Montana	P.C.T. Advance	Monthly Payment	—0—	5,741.26	1,920.00	3,821.26
Local 1357—Philadelphia, Pennsylvania	Strike Fund Advance	Lump Payment	—0—	8,000.00	8,000.00	—0—
Local 1361—Allentown, Pennsylvania	Strike Fund Advance	Lump Payment	—0—	4,000.00	4,000.00	—0—
Local 1434—Reno, Nevada	P.C.T. Advance	Monthly Payment	—0—	9,825.90	700.00	9,125.90
Local 1434—Reno, Nevada	Strike Fund Advance	Lump Payment	—0—	2,000.00	—0—	2,000.00
Local 330—Seattle, Washington	P.C.T. Advance	Monthly Payment	—0—	30,860.58	15,430.29	15,430.29
Local 1536—Las Vegas, Nevada	Strike Fund Advance	Lump Payment	—0—	40,000.00	40,000.00	—0—
			$472,402.12	$373.008.94	$286,300.30	$559,110.76

R.C.I.A. LM-2

Year Ended April 30, 1977

Schedule 3—Other Assets

(A) Description	(B) Amount
1. Local & Office Supplies	$153,506
2. Annuity—President Emeritus	121,393
3. Prepaid Insurance	132,921
4. Deposits	9,310
5. Twenty-seventh Int'l Convention Expense	14,291
Total to Schedule 3	$431,421

R.C.I.A. LM-2

Year Ended April 30, 1977

Schedule 6—Purchase of Investments and Fixed Assets

(A) Description of Assets	(B) Cost	(C) Book Value	(D) Cash Paid
Suffridge Building Improvements	$ 11,856.59	$ 11,856.59	$ 11,856.59
National Bank of Washington—Trust Fund	53,223.92	53,223.92	53,223.92
Union First National Bank of Washington—Trust Fund	209,785.39	209,785.39	209,785.39
Fund for U.S. Government Securities	38,517.38	38,517.38	38,517.38
RCIA Placid Harbor Conference Center Improvements	1,163,726.15	1,163,726.15	1,163,726.15
Eaton & Howard Fund	1,723.78	1,723.78	1,723.78
Lehman Corporation	19,248.72	19,248.72	19,248.72
Home on Transfer—Lewis—Georgia	5,234.43	5,234.43	5,234.43
Home on Transfer—Dryer—Ohio	84.74	84.74	84.74
Home on Transfer—Hall—Virginia	73,464.45	73,464.45	73,464.45
Home on Transfer—Wynn—New Jersey	33,031.92	33,031.92	33,031.92
Home on Transfer—Dority—Virginia	48,547.11	48,547.11	48,547.11
Home on Transfer—Novicoff—Michigan	15,976.16	15,976.16	15,976.16
Home on Transfer—Carter—Georgia	10,235.29	10,235.29	10,235.29
Automotive Equipment	2,191.25	2,191.25	2,191.25
Office & Conference Center Furniture & Equipment	201,096.69	201,096.69	201,096.69
Total to Schedule 6:	$1,887,943.97	$1,887,943.97	$1,887,943.97

R.C.I.A. LM-2

Year Ended April 30, 1977

Schedule 7—Sale of Investments and Fixed Assets

(A) Description of Assets Sold	(B) Cost	(C) Book Value	(D) Gross Sales Price	(E) Amount Received
1. Homes on Transfer *	$218,722.64	$218,722.64	$193,532.36	$193,532.36
2. Automotive Equipment	9,475.00	7,600.00	7,600.00	7,600.00
3. Office Furniture & Equipment	12,764.00	2,556.75	436.00	436.00
4. Other Investments	185,560.07	185,560.07	186,430.93	186,430.93
Total to Schedule 7:	$426,521.71	$414,439.46	$387,999.29	$387,999.29

* Location of Homes on Transfer
- Virginia
- Ohio
- New Jersey
- Michigan
- Georgia

R.C.I.A. LM-2

Year Ended April 30, 1977

Schedule 13—Other Receipts

	(A) Other Sources	(B) Amount
1.	"Advocate" Subscriptions	$ 260.00
2.	Surety Bond Premiums	26,631.61
3.	RCIA H. & W. Premium Reimbursement	174,083.82
4.	Accounts Payable—Affiliates	271,850.81
5.	RCIA Pension Plan—P.C.T.	4,815,511.14
6.	RCIA Pension Plan—Participants	1,177,251.93
7.	1st Trust Principal Payments	2,526.07
8.	Miscellaneous Refunds & Receipts	73,561.50
9.	Canadian Exchange	5,967.50
10.	Overseas Study Program	44,587.50
11.	Program Assistance	269,814.85
12.	Active Ballot Club—Contributions	400,783.67
13.	RCIA Conference Center	4,861.63
	Total to Schedule 13	$7,267,692.03

R.C.I.A. LM-2

Year Ended April 30, 1977

Schedule 14—Other Disbursements

	(A) Other Purposes	(B) Amount
1.	Advocate	$ 462,914.86
2.	Building Expenses	324,480.40
3.	General Organizing	784,677.92
4.	Pension Plan Transfers	5,885,002.49
5.	Conference & Convention	413,863.97
6.	Division Office Expense	318,389.40
7.	International Representative Expense	317,135.66
8.	Payroll Deductions Forwarded	564,558.87
9.	Mortgages Payable	100,479.84
10.	RCIA Placid Harbor Conference Center	136,384.98
11.	AIFLD—AID; AALC	181,134.93
	Total to Schedule 14	$9,489,023.32

RCIA—LM-2

Year Ended April 30, 1977

Schedule 9—Disbursements to Officers

(A) Name	(B) Title	(C) Status	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Housewright, James T.	President	C	$110,000.00	$13,000.00	$ 15,857.33	$ —0—	$ 138,857.33
Wynn, William H.	Secretary-Treas.	N	57,857.66	9,008.00	20,240.41	—0—	87,106.07
Hall, Peter L.	Secretary-Treas.	P	49,500.00	4,720.00	9,620.72	12,115.15	75,955.87
McGrath, William A.	Vice-President	P	53,122.29	4,002.00	3,506.90	9,986.82	70,618.01
Foreman, Jay H.	Vice-President	N	44,837.35	3,974.00	5,647.95	—0—	54,459.30
Whaley, Thomas G.	Vice-President	C	52,887.35	3,790.00	7,518.79	—0—	64,196.14
McAllister, Richard C.	Vice-President	C	47,593.91	3,966.00	11,219.94	—0—	62,779.85
Perry, Richard J.	Vice-President	N	44,822.66	3,746.00	7,802.90	—0—	56,371.56
Dority, Douglas H.	Vice-President	N	41,431.60	5,988.00	14,211.90	—0—	61,631.50
Cadwell, Robert M.	Vice-President	C	43,966.64	4,430.00	13,807.74	—0—	62,204.38
Dryer, William J.	Vice-President	C	43,966.64	4,254.00	10,448.70	—0—	58,669.34
Lewis, Richard B.	Vice-President	C	43,966.64	5,146.00	12,278.46	—0—	61,391.10
Russow, Thomas M.	Vice-President	C	43,966.64	3,948.00	10,507.84	—0—	58,422.48
Britton, Eugene A.	Vice-President	C	43,966.64	4,000.00	16,028.75	—0—	63,995.39
Hofer, Donald J.	Vice-President	C	43,966.64	3,428.00	9,976.13	—0—	57,370.77
Loveall, Jack	Vice-President	C	43,966.64	4,156.00	21,080.71	—0—	69,203.35
Evans, Clifford	Vice-President	C	43,966.64	3,534.00	20,048.61	—0—	67,549.25
Heller, Sidney	Vice-President	C	6,000.00	2,125.00	2,040.46	—0—	10,165.46
Akman, Alvin	Vice-President	C	6,000.00	748.00	1,236.32	—0—	7,984.32
Jenkins, William N.	Vice-President	C	6,000.00	2,150.00	3,221. 8	—0—	11,371.28
McDonald, David A.	Vice-President	C	6,000.00	1,205.00	2,321.95	—0—	9,526.95
Rira, Kenneth	Vice-President	C	6,000.00	1,100.00	1,440.00	—0—	8,540.00
Valenti, Jack	Vice-President	C	6,000.00	1,200.00	1,433.54	—0—	8,633.54
Olwell, William J.	Vice-President	C	6,000.00	1,100.00	2,053.12	—0—	9,153.12
McLoughlin, James P.	Vice-President	C	6,000.00	1,000.00	3,593.08	—0—	10,593.08
Krickan, Rudy	Vice-President	C	6,000.00	900.00	2,690.00	—0—	9,590.00
TOTAL TO SCHEDULE 9			$907,785.94	$96,618.00	$229,833.53	$22,101.97	$1,256,339.44

R.C.I.A. LM-2
Year Ended April 30, 1977
Schedule 10—Disbursements to Employees

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Abdow, Richard J.	Field Assistant	Local #1459	$ 10,125.00	$ 1,831.00	$ 4,443.27		$ 16,399.27
Abel, Myrtle B.	Office		13,829.56	—0—	20.00		13,849.56
Abney, Brenda K.	Office		11,384.95	—0—	4.00		11,388.95
Adams, John M.	Executive Assistant		29,975.00	3,445.00	6,942.52		40,362.52
Adrion, David	Operations Supervisor		16,565.52	80.00	164.64		16,810.16
Asselin, Jean-Guy	Representative		15,575.00	2,269.00	6,320.17		24,164.17
Bailey, Marshall J.	Field Assistant		19,860.71	2,824.00	7,343.63		30,028.34
Bailey, Rodney R.	Office		12,261.27	—0—	3.00		12,264.27
Baldit, Roy P.	Representative	Local #455	14,325.00	4,047.00	7,469.59		25,841,59
Barnes, David L.	Representative		12,950.00	4,386.00	6,177.12		23,513.12
Barrera, Gilbert A.	Representative		15,575.00	3,095.00	5,430.45		24,100.45
Barry, David T.	Field Assistant		19,070.00	3,856.00	8,844.81		31,770.81
Bates, Loretta E.	Representative		9,115.00	3,335.05	3,816.07		16,266.12
Becka, Barbara J.	Office		11,740.92	—0—	14.00		11,754.92
Bennett, Jerry	Field Assistant	D.C. #24	10,345.00	1,602.00	3,368.70		15,315.70
Benson, Richard	Representative	Local #1100	10,975.00	3,238.00	4,987.59		19,200.59
Berns, Leon E.	Collective Barg. Representative		28,191.75	2,887.00	5,836.84		36,915.59
Bible, David L.	Representative		14,042.50	4,748.00	5,198.36		23,988.86
Birge, Robert D.	Representative		15,575.00	3,414.00	9,263.67		28,252.67
Blakes, Van E.	Prof. & Health Care Coordinator		17,495.00	3,518.00	10,821.82		31,834.82
Boivin, Pierre-F.	Executive Assistant		29,960.00	3,424.00	9,633.54		43,017.54
Bostrom, Jane	Office		12,070.18	—0—	4.00		12,074.18
Bowman, Clay G.	Representative		14,815.00	4,409.00	3,699.16		22,923.16

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Broeska, Kenneth A.	Western Field Assistant	Local #401	$ 16,405.00	$ 2,629.00	$ 5,772.28		$ 24,806.28
Brooks, Robin E.	Representative		9,052.50	4,397.50	4,157.59		17,607.59
Brooks, Ronald T.	Special Crew Coordinator		17,495.00	2,822.00	5,333.62		25,650.62
Brown, Denise A.	Office		9,932.62	—0—	222.20		10,154.82
Brown, Joseph L.	Office		11,644.02	—0—	212.90		11,856.92
Bullen, Daniel C.	Representative		15,575.00	4,376.00	9,192.35		29,143.35
Burris, Robert E.	Dept. Store Program Coordinator		18,795.00	4,534.00	8,989.02		32,318.02
Burton, Edward L.	Representative		15,324.04	5,033.60	4,746.53		25,104.17
Bury Cheryl L.	Office		10,924.61	—0—	12.00		10,936.61
Caley, Mary T.	Special Assistant Health Care		19,660.00	3,374.00	6,762.56		29,796.56
Campeau, Jean	Dept. Store Program Coordinator		8,875.00	684.00	2,297.21		11,856.21
Cardwell, Cecil I.	Representative		15,575.00	4,491.00	4,656.58		24,722.58
Carman, Dwayne	Executive Assistant		29,271.00	4,867.00	7,935.72		42,073.72
Carter, Harry J.	Assistant to Director		31,246.93	5,334.00	9,594.71		46,175.64
Carter, Tommie L.	Representative		15,575.00	4,952.00	8,179.71		28,706.71
Casey, Thomas E.	Representative		9,943.32	5,087.00	6,576.34		21,606.66
Chavaree, Albert J.	Field Assistant		20,095.00	3,314.00	6,342.90		29,751.90
Christy, Michael H.	Collective Barg. Representative		28,311.00	2,850.00	5,570.10		36,731.10
Clark, Roger T.	Executive Assistant		29,975.00	3,337.00	7,304.86		40,616.86
Cloutier, Andre	Representative		11,552.50	5,719.00	6,959.38		24,230.88
Cochran, Gerd R.	Office		11,942.95	—0—	29.50		11,972.45
Comeaux, Robert L.	Representative	D.C. #24	14,200.00	5,214.00	7,054.10		26,468.10

Connor, Joseph P., Jr.	Prof. & Health Care Coordinator		$ 17,145.00	$ 2,110.00	$ 4,238.98	$ 23,493.98
Corbett, Michael W.	Representative		15,575.00	4,612.00	3,817.52	24,004.52
Corbin, Ronald E.	Representative		15,575.00	1,663.00	4,818.54	22,056.54
Cory, Alan E.	Field Assistant		20,095.00	3,634.00	6,406.33	30,135.33
Cory, Gregory A.	Representative	Local #588	15,487.85	3,412.00	5,416.66	24,316.51
Couttee, Douglas	Co-Director Political Affairs		32,971.95	3,621.00	5,719.57	42,312.52
Danio, William	Representative		15,249.29	4,181.00	5,719.75	25,150.04
Davis, Walter L.	Spec. Assistant to the President		30,858.13	4,306.25	7,286.09	42,450.47
Day, David A.	Representative		14,563.54	4,949.00	6,106.21	25,618.75
Dial, Richard N.	Membership Service Representative		17,495.00	3,772.00	10,785.29	32,052.29
Dillworth, Clinton	Membership Service Representative		15,575.00	4,939.00	4,956.56	25,470.56
Dininger, Frank R.	Executive Assistant		29,957.00	3,180.00	6,455.07	39,610.07
Disuanco, Corazon P.	Office		11,742.43	—0—	32.00	11,774.43
Ditz, Mary N.	Office		13,900.84	80.00	170.50	14,151.34
Dixon, Sharon M.	Office		11,893.13	—0—	13.00	11,906.13
Donaldson, Robert C.	Field Assistant		20,095.00	3,579.00	6,871.81	30,545.81
Doyle, Thomas W.	Representative		15,575.00	5,450.00	8,833.22	29,858,22
Driskill, Platt W.	Representative		15,575.00	5,010.00	6,945.80	27,530.80
Duckett, Gary A.	Assistant to Director		29,625.80	2,343.00	3,901.62	35,870.42
Dumont, Yves	Representative		8,420.00	1,808.00	3,382.10	13,610.10
Dunn, Michael C.	Representative		15,575.00	3,997.00	6,591.84	26,163.84
Dunn, Robert J.	Representative		15,095.00	4,298.00	4,005.58	23,398.58
Ellis, Robert M.	Representative		13,055.00	5,642.00	8,510.19	27,207.19
Famiglietti, Regina A.	Office		20,354.42	350.00	16.38	20,720.80
Felder, Lois	Director, Commun. Relations		26,408.05	4,393.00	6,775.27	37,576.32

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Flamand, Andre	Representative		$ 6,237.16	$ 1,226.00	$ 2,620.55		$ 10,083.71
Foley, F. Michael-Christian	Representative		6,407.86	1,709.86	3,798.89		11,916.61
Forsythe, William R.	Collective Barg. Representative		28,311.00	2,542.00	6,031.73		36,884.73
Freund, William T.	Field Assistant		20,095.00	2,792.00	6,099.38		28,986.38
Fuchs, James W.	Dept. Store Program Coordinator		18,795.00	3,885.00	7,173.43		29,853.43
Fultz, Gordon R.	Membership Service Representative		17,095.00	4,211.00	10,680.46		31,986.46
Funk, Robert E., Jr.	Assistant to General Counsel		29,185.14	1,799.00	3,665.19		34,649.33
Gandy, Teresa A.	Office		11,571.07	—0—	22.00		11,593.07
Gary, W. Joyce	Office		13,205.61	—0—	3.00		13,208.61
Gay, Robert E.	Office Manager		30,141.85	1,962.00	1,574.30		33,678.15
Geary, Elizabeth A.	Office		11,882.32	—0—	3.00		11,885.32
Gerrard, Melissa V.	Representative		9,345.00	5,547.00	4,324.68		19,216.68
Giuliana, Jean A.	Membership Service Representative		17,495.00	2,498.00	6,205.78		26,198.78
Glenn, Thomas U.	Hawaiian Coord.		19,500.00	1,959.00	4,104.46		25,563.46
Gonzalez, Linda J.	Office		12,801.93	—0—	8.00		12,809.93
Gourlay, John M.	Collective Barg. Representative		21,635.50	4,773.00	6,980.13		33,388.63
Gozy, Henry S.	Representative		13,225.00	4,541.00	4,695.93		22,461.93
Greilick, Thomas F.	Prof. & Health Care Coordinator		17,495.00	4,312.00	9,938.30		31,745.30
Gross, Geraldine	Office		10,920.04	—0—	4.00		10,924.04
Gruver, Ronald E.	Chief Accountant		22,797.30	350.00	21.00		23,168.30
Haggard, Ray	Executive Assistant		29,975.00	2,672.00	5,585.14		38,232.14

Hall, Marsha L.	Office		$ 11,235.50	$ —0—	$ 10.00	11,245.50
Hamilton, Raymond E.	Operations Manager		11,108.21	—0—	2,033.28	13,141.49
Hamilton, Robert W.	Representative		15,575.00	3,476.00	5,850,89	24,910.89
Harrington, Barbara J.	Representative		12,765.00	4,696.50	4,676.13	22,137.63
Harris, Ruth E.	Office		10,333.67	—0—	12.00	10,345.67
Harrison, James D.	Representative		14,535.00	4,408.05	4,099.31	23,042.36
Hazlewood, James D.	Representative		15,895.00	3,755.00	15,207.73	34,857.73
Heard, Norman L.	Assistant to Director		34,840.30	3,627.00	4,403.46	42,870.76
Heise, Larry	Field Assistant	Local #588	17,225.00	4,522.00	8,470.51	30,217.51
Henry, Betty	Representative		15,055.00	3,138.00	7,808.87	26,001.87
Hines, Emil C., Jr.	Representative		15,575.00	5,148.00	7,495.49	28,218.49
Hoffman, Charles P.	Assistant Director Data Processing		21,433.20	256.00	559.80	22,249.00
Holtschlag, George	Representative	Local #1540	14,936.66	4,742.00	4,660.04	24,338.70
House, Daniel W.	Membership Service Representative		17,495.00	3,349.00	7,235.02	28,079.02
Housewright, James T., Jr.	Representative		10,128.75	2,825.00	2,687.24	15,640.99
Howell, Candace L.	Representative		11,825.00	3,161.00	3,684.92	18,670.92
Hrubes, Marvin R.	Assistant to Director		22,348.80	3,459.00	6,126.64	31,934.44
Huntley, James L.	Director of A.B.C.		32,621.25	2,937.00	3,853.64	39,411.89
Ingle, Gary W.	Representative		15,487.86	2,831.00	7,203.11	25,521.97
Ingley, Bernard	Special Crew Coordinator		17,495.00	2,126.00	5,492.66	25,113.66
Jerome, Maynard	Representative		15,575.00	5,112.00	4,418.32	25,105.32
Johnson, Lois M.	Representative		15,095.00	4,367.00	6,372.71	25,834.71
Jones, Barbara A.	Office		12,008.87	—0—	12.00	12,020.87

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Joy, Marion C., Sr.	Superintendent of Building & Grounds		$ 18,558.20	$ —0—	$ 1,105.20		$ 19,663.40
Kaufert, Richard J.	Representative		15,575.00	6,274.00	7,450.87		29,299.87
Kazel, Ronald B.	Membership Service Representative		16,620.00	2,982.00	6,332.29		25,934.29
Kean, Ronald	Representative		15,272.14	3,815.00	6,259.66		25,346.80
Kehoe, Theodore E.	Executive Assistant		29,975.00	2,714.00	7,347.58		40,036.58
Kellogg, Norman A.	Special Crew Coordinator		17,495.00	3,704.00	8,477.42		29,676.42
Kennerly, Sandra L.	Office		11,704.18	—0—	12.00		11,716.18
Kentner, Arletta R.	Representative		15,575.00	4,434.00	4,707.48		24,716.48
Kinyon, Robert L.	Representative		11,847.50	5,194.00	6,373.44		23,414.94
Kivikko, Dennis	Field Assistant		20,095.00	3,453.00	7,082.58		30,630.58
Klitzner, Beth S.	Assistant to General Counsel		9,531.37	572.00	1,039.93		11,143.30
Kolkman, Eugene H.	Executive Assistant	Local #954	19,451.00	2,223.00	4,079.41		25,753.41
Kolman, Larry L.	Collective Barg. Representative		28,311.00	2,653.00	5,320.66		36,284.66
Korb, George A.	Director of Transportation		26,295.60	1,928.00	2,614.75		30,838.35
Kurlancki, Charles S.	Representative		15,335.00	4,880.00	5,212.32		25,427.32
Lanahan, Mary	Representative		15,575.00	6,071.00	8,971.23		30,617.23
Lanneville, Claude D.	Representative		15,575.00	3,554.00	6,998.45		26,127.45
Lefebvre, Henri	Membership Service Representative		17,495.00	2,084.00	5,472.11		25,051.11
Leonard, Michael E.	Prof. & Health Care Coordinator		17,495.00	3,894.00	8,509.12		29,898.12
Lowthers, Charles J.	Executive Assistant to the Sec.-Treas.		38,983.67	3,154.00	3,142.82		45,280.49

Lowthers, Kathryn J.	Office		$ 12,643.67	$ —0—	$ 4.00		$ 12,647.67
Lussier, Sylvain	Representative	Local #502	8,035.00	4,444.00	2,802.78		15,281.78
Macon, Linda P.	Office		10,812.19	—0—	4.00		10,816.19
Mangum, Eleanor L.	Office		10,894.09	—0—	28.00		10,922.09
Maples, John J.	Representative		7,457.50	3,470.00	5,049.14		15,976.64
Marion, Yvon	Special Crew Coordinator		16,355.00	2,260.00	5,349.20		23,964.20
Mason, Andrew, Jr.	Dept. Store Program Coordinator		18,795.00	2,433.00	4,540.57		25,768.57
Mazarz, Dorothy A.	Office		19,590.22	525.00	84.83		20,200.05
McDavid, Michael F.	Dept. Store Program Coordinator		18,795.00	3,585.00	10,066.11		32,446.11
McIntyre, Roy E.	Prof. & Health Care Coordinator		17,495.00	3,173.00	9,577.19		30,245.19
McLarty, James P.	Representative	Local #588	15,575.00	4,860.00	6,077.28		26,512.28
McLaughlin Cheryl	Office		14,055.14	—0—	4.00		14,059.14
Meade, Dwight A.	Representative		15,575.00	4,648.00	4,659.60		24,882.60
Miller, Ellen I.	Office		11,982.14	—0—	4.00		11,986.14
Monk, Frances	Office		13,349.91	—0—	—0—	$715.52	14,065.43
Morand, Vincent	Eastern Field Assistant		24,255.00	1,893.00	4,731.34		30,879.34
Moroz, Richard H.	Representative		5,453.58	845.00	5,108.96		11,407.54
Morris, Richard W.	Prof. & Health Care Coordinator		18,795.00	5,037.00	10,589.27		34,421.27
Mouliert, Benigno	Special Caribbean Representative		14,515.00	1,656.00	5,704.07		21,875.07
Mullin, Arthur D.	Representative		15,675.00	4,830.00	4,554.59		25,059.59
Murphy, George R.	General Counsel		49,508.91	3,423.00	8,326.54		61,258.45
Nebeker, Gary R.	Field Assistant		20,095.00	3,478.00	7,345.15		30,918.15
Neubaum, Gary E.	Representative		15,295.00	5,171.00	5,243.89		25,709.89
Newstrand, Gregg G.	Prof. & Health Care Coordinator		17,495.00	4,100.00	12,703.53		34,298.53

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Nicholson, Steven R.	Special Crew Coordinator		$ 17,495.00	$ 2,885.00	$ 7,276.63		$ 27,656.63
Nissley, Robert H., Sr.	Membership Service Representative		16,770.00	3,384.00	7,571.97		27,725.97
Northeide, Daniel A.	Director, Data Processing		28,344.44	2,291.00	2,917.85		33,553.29
Novicoff, Robert	Executive Assistant		19,802.00	4,339.00	8,183.83		32,324.83
O'Keefe, Eileen	Representative		12,546.42	3,567.00	7,005.45		23,118.87
O'Keefe, Gerard P.	Director of Int'l Affairs		30,259.35	2,460.00	9,957.04		42,694.39
Orth, Louis M.	Representative		14,843.58	3,039.00	10,102.94		27,985.52
Owens, Herman L.	Representative		14,395.00	3,508.00	4,457.90		22,360.90
Palmer, Jerry E.	Dept. Store Program Coordinator		18,795.00	4,178.10	15,952.03		38,825.13
Patterson, Robert B., Jr.	Field Assistant		20,095.00	3,119.00	5,891.81		29,105.81
Pendew, John L., Jr.	Field Assistant		19,020.00	2,874.00	8,077.51		29,971.51
Pinto, Rudolph	Representative		15,575.00	4,660.00	6,722.10		26,957.10
Price, Rico	Representative		10,339.17	4,299.00	3,148.92		17,787.09
Priest, Roland	Representative		15,295.00	2,658.00	5,515.06		23,468.06
Prince, Myrtle A.	Membership Service Representative		13,055.00	5,055.00	6,385.74		24,495.74
Proctor, Mable T.	Office		11,413.77	—0—	12.00		11,425.77
Provencal, Jean-Guy	Representative		15,295.00	1,776.00	4,051.88		21,122.88
Pujos, Lucille	Office		10,063.00	—0—	71.30		10,134.30
Questa, Camillus P.	Collective Barg. Representative		28,311.00	2,796.00	5,866.36		36,973.36
Rando, Robert	Representative		15,175.00	4,875.00	6,191.95		26,241.95

Re, Robert L.	Representative	$ 14,332.01	$ 4,266.00	$ 5,784.83	$ 24,382.84
Reed, Nelson	Representative	15,575.00	3,423.00	8,943.94	27,941.94
Reinhart, Vernon	Field Assistant	20,095.00	3,604.00	6,071.56	29,770.56
Renner, Robert C.	Membership Service Representative	17,495.00	3,980.00	7,309.94	28,784.94
Rivkin, Robert N.	Representative	15,295.00	4,090.00	6,114.27	25,499.27
Robinson, Robert W.	Field Auditor	17,836.20	1,970.00	2,167.03	21,973.23
Roesel, Richard	Assistant to General Counsel	27,894.15	720.00	764.23	29,378.38
Rorie, Donald L.	Membership Service Representative	17,495.00	4,019.00	11,440.73	32,954.73
Rosenberry, Ivan C.	Collective Barg. Representative	28,311.00	2,806.00	5,286.72	36,403.72
Ryder, Robert F.	Field Assistant	20,251.00	3,066.00	6,661.79	29,978.79
Scheeby, George J. II	Representative	14,465.00	5,273.00	6,511.13	26,249.13
Schmidt, James P.	Representative	15,575.00	4,771.00	5,626.34	25,972.34
Schroeder, Joan M.	Economist	20,806.10	574.00	879.99	22,260.09
Schulze, Max G.	Representative	15,495.00	6,078.00	7,812.81	29,385.81
Scott, Lawrence K.	Representative	14,695.00	3,728.00	5,966.72	24,389.72
Seidenfaden, George L. Sr.	Representative	14,952.99	3,506.00	6,508.60	24,967.59
Senn, William	Executive Assistant	20,997.50	3,324.00	6,485.51	30,807.01
Serabjit-Singh, Armanda	Representative	14,295.00	1,504.00	3,963.32	19,762.32
Shepler, Laura D.	Office	11,455.35	—0—	10.00	11,465.35
Sherman, Robert E.	Representative	15,575.00	5,192.00	4,914.62	25,681.62
Shreve, Arthur W.	Representative	15,575.00	5,790.00	8,814.38	30,179.38
Sierra, Juan, Jr.	Representative	15,575.00	4,176.00	7,080.62	26,831.62
Silvester, John A.	Field Assistant	20,095.00	3,738.00	8,663.61	32,556.61
Sjoerds, Rinus	Representative	15,575.00	2,526.00	6,621.54	24,722.54
Stack, Melvin	Assistant Editor of the ADVOCATE	27,706.10	1,378.70	3,933.34	33,018.14
Stankus, Robert T.	Representative	15,295.00	5,287.00	6,243.71	26,825.71

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Steill, Norma J.	Assistant to the President		$ 33,011.40	$ 2 621.00	$ 4,406.88		$ 40,039.28
Sterling, Brenda A.	Office		11,905.38	—0—	24.00		11,929.38
Stubblefield, Raymond M.	Special Assistant Health Care		25,523.50	3,642.00	6,427.28		35,592.78
Suttie, Rebecca H.	Office		11,469.37	—0—	12.00		11,481.37
Szadek, Louis	Prof. & Health Care Coordinator		17,495.00	3,841.00	13,423.29		34,759.29
Terry, Granville P.	Field Assistant		20,095.00	3,452.00	7,755.85		31,302.85
Thomas, Clarence O.	Field Assistant	Local #629	7,125.00	1,362.00	3,305.08		11,792.08
Thrugstad, Ronald E.	Representative		12,800.00	4,606.00	4,559.52		21,965.52
Tiner, Michael	Co-Director Legislative Affairs		19,461.93	2,331.00	1,217.82		23,010.75
Tracy, John D.	Representative		14,615.00	4,776.00	7,129.93		26,520.93
Turner, William T.	Assistant to Director		33,011.40	3,053.00	5,025.47		41,089.87
Tursky, Michael	Representative	Local #21	10,815.00	1,523.00	4,031.28		16,369.28
Vlsch, Charles L.	Field Assistant		19,070.00	2,969.00	5,808.89		27,847.89
Valentine, Pattye	Office		13,823.45	—0—	16.00		13,839.45
Valsecchi, Albert C.	Representative		15,575.00	5,177.00	8,232.68		28,984.68
	Assistant to the President		34,433.80	2,996.00	4,285.44		41,715.24
Wackett, Ronald	Assistant Director, Fringe Benefits		31,810.55	2,875.00	2,121.03		36,806.58
Wade, David A.	Assistant Director Int'l Affairs		30,259.35	2,640.00	5,123.41		38,022.76
Waldon, Miriam F.	Office		12,733.97	—0—	16.10		12,750.07
Walton, Robert M.	Representative		13,310.00	2,738.00	5,109.49		21,157.49

Wannamaker, Ann	Representative	$ 15,575.00	$ 3,407.00	$ 5,154.70	$ 24,136.70	
Wendel, Edward	Assistant General Counsel	38,485.76	1,443.00	3,012.31	42,941.07	
Whitesire, Oscar C.	Representative	15,575.00	3,653.00	6,266.53	25,494.53	
Whitlock, Gilbert	Representative Local #206	15,575.00	3,869.00	6,564.56	26,008.56	
Whittaker, James C.	Membership Service Representative	15,400.75	3,450.00	4,777.43	23,628.18	
Williams, Darlene M.	Office	12,262.00	—0—	3.00	12,265.00	
Williamson, Harriett D.	Office	16,678.22	250.00	27.50	16,955.72	
Wilson, Charles F.	Office	24,413.40	350.00	41.00	24,804.40	
Wittman, Robert L.	Collective Barg. Representative	28,311.00	2,595.00	3,665.30	34,571.30	
Wolfe, Maria L.	Office	11,469.37	—0—	12.00	11,481.37	
Youngblood, Mary Ann	Representative	15,575.00	3,502.50	6,179.85	25,257.35	
Abel, Betty L.	Office	11,087.35	—0—	—0—	11,087.35	
Abell, David A.	Staff Accountant	12,560.30	—0—	—0—	12,560.30	
Amon, John	Senior Accountant	16,791.90	—0—	—0—	16,791.90	
Benedict, Jacqueline C.	Office	11,341.91	—0—	—0—	11,341.91	
Blum, Barbara T.	Office	16,678.22	—0—	—0—	16,678.22	
Bradfield, Joan R.	Office	12,827.30	—0—	—0—	12,827.30	
Bryant, Iris	Office	11,153.74	—0—	—0—	11,153.74	
Buchanan, Ruth L.	Office	13,333.25	—0—	—0—	13,333.25	
Champ, Sonja T.	Office	13,521.47	—0—	—0—	13,521.47	
Cicero, Jeannette M.	Office	10,579.98	—0—	—0—	10,579.98	
Connelly, Thomas F.	Maintenance Personnel	13,012.03	—0—	—0—	13,012.03	
Costello, Sharon K.	Office	10,329.17	—0—	—0—	10,329.17	
Cox, Florence M.	Office	10,355.83	—0—	—0—	10,355.83	
Currie, Joseph M.	Maintenance Personnel	13,572.38	—0—	—0—	13,572.38	

(A) Name	(B) Position	(C) Affil. Org.	(D) Gross Salary	(E) Allowances	(F) Expenses	(G) Other	(H) Total
Dacey, Jean D.	Office		$ 11,357.46	$ —0—	$ —0—		$ 11,357.46
Davis, Mary L.	Office		11,941.87	—0—	—0—		11,941.87
Devens, Alexcis	Office		11,253.00	—0—	—0—		11,253.00
Ferguson, William P.	Maintenance Personnel		13,978.64	—0—	—0—		13,978.64
Flamish, Carol D.	Office		10,382.98	—0—	—0—		10,382.98
Garcia, Carmen	Office		13,888.94	144.00	286.66		14,319.60
Gassaway, Gloria J.	Office		11,138.41	—0—	—0—		11,138.41
Gould, Carol	Office		14,235.28	—0—	—0—		14,235.28
Hayden, Joseph A., Sr.	Maintenance Personnel		14,789.71	—0—	—0—		14,789.71
Hosch, Charlotte	Office		11,144.38	—0—	—0—		11,144.38
Jackson, Robert	Computer Operator		12,115.13	—0—	—0—		12,115.13
Jameson, James E.	Maintenance Personnel		10,451.26	—0—	—0—		10,451.26
Johnston, Florence E.	Office		12,953.22	—0—	—0—		12,953.22
Jolet, Sherri	Office		10,540.00	—0—	—0—		10,540.00
Kimble, Joan M.	Office		13,111.45	—0—	—0—		13,111.45
Laroque, Rebecca L.	Office		11,268.47	—0—	—0—		11,268.47
Lavoie, Monique Y.	Office		10,063.00	—0—	—0—		10,063.00
Mangum, Susan J.	Office		12,837.49	—0—	—0—		12,837.49
McCoy, Holly Ann	Office		16,529.22	—0—	—0—		16,529.22
McHan, Joseph P.	Computer Operator		10,849.12	—0—	—0—		10,849.12
Morgan, Nadine K.	Office		14,074.73	—0—	—0—		14,074.73
Moss, Linda E.	Office		11,855.36	—0—	—0—		11,855.36
Munley, Evon E.	Office		11,275.18	—0—	—0—		11,275.18
Murphy, Debra	Office		10,472.00	—0—	—0—		10,472.00
Newman, Patricia S.	Office		13,831.49	—0—	—0—		13,831.49
Nickles, Elizabeth A.	Office		11,213.67	—0—	—0—		11,213.67

Patterson, Wilma M.	Office	$ 10,977.46	$ —0—	$ —0—		$ 10,977.46
Peay, Carolyn A.	Office	10,893.73	—0—	—0—		10,893.73
Perrine, Donald	Office	12,353.22	—0—	—0—		12,353.22
Peters, Wendy K.	Office	11,513.00	—0—	—0—		11,513.00
Petrides, Sandra G.	Office	15,783.45	—0—	—0—		15,783.45
Plotner, Ruth	Office	11,951.79	—0—	—0—		11,951.79
Potenza, Mary Jane	Office	10,343.00	—0—	—0—		10,343.00
Richards, Timothy S.	Staff Accountant	15,944.33	112.00	388.57		16,444.90
Robertson, Sheree L.	Office	11,256.11	—0—	—0—		11,256.11
Robinson, Ruth B.	Office	12,587.57	—0—	—0—		12,587.57
Savage, Charmaine Y.	Office	12,550.27	—0—	—0—		12,550.27
Sloan, Betty L.	Office	13,563.89	—0—	—0—		13,563.89
Sutton, Judy J.	Office	12,765.80	—0—	—0—		12,765.80
Thompson, Barbara J.	Office	12,534.96	—0—	—0—		12,534.96
Turner, Phyllis A.	Office	12,257.59	—0—	—0—		12,257.59
Weatherby, Carol A.	Office	11,350.00	—0—	—0—		11,350.00
Wilson, Phyllis A.	Office	13,276.14	—0—	—0—		13,276.14
Wood, Ray F.	Assistant to the Manager	13,654.26	—0—	—0—		13,654.26
		$4,840,562.73	$672,871.11	$1,170,844.87	$715.52	$6,684,994.23
TOTAL TO SCHEDULE 10		$ 11,513.00	$ —0—	$ —0—		$ 11,513.00

SUPREME COURT OF THE UNITED STATES

No. 84-1493

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

ORDER ALLOWING CERTIORARI

Filed May 13, 1985

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Ninth Circuit* is granted. This case is consolidated with case No. 84-1509, *Seattle-First National Bank* v. *Financial Institution Employees of America, etc., et al.*, and a total of one hour is allocated for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 84-1509

SEATTLE-FIRST NATIONAL BANK, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, ETC., ET AL.

ORDER ALLOWING CERTIORARI

Filed May 13, 1985

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Nos. 84-1493 & 84-1509

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents.

and

SEATTLE-FIRST NATIONAL BANK,
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FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR PETITIONER SEATTLE-FIRST NATIONAL BANK

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July 11, 1985

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QUESTION PRESENTED FOR REVIEW

Whether the National Labor Relations Board acted rationally and in a manner consistent with the National Labor Relations Act when it refused to amend its certification of the exclusive bargaining representative for all unit employees of Seattle-First National Bank based upon the results of an affiliation election in which only some unit employees—union members—could vote.

LIST OF PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES

Seattle-First National Bank is a wholly-owned subsidiary of Seafirst Corporation, which is, in turn, a wholly-owned subsidiary of BankAmerica Corporation. All of Seattle-First National Bank's subsidiaries are wholly owned, excluding director qualifying shares in certain instances. BankAmerica Corporation's subsidiaries (except wholly-owned subsidiaries) are: Investment Guaranty Corporation, Banca d'America e d'Italia, BankAmerica Options, Inc., BA Australia Limited, BA Finance (Switzerland) Ltd., Bank of America Cameroon S.A., Commercial Bank of Africa Ltd., BA Servicios, S.A., and Consumer Credit Service, Inc. Should the Court desire disclosure of wholly-owned subsidiaries of BankAmerica Corporation, Seattle-First National Bank will supplement its list of subsidiaries and affiliates.

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OCTOBER TERM, 1985

Nos. 84-1493 & 84-1509

NATIONAL LABOR RELATIONS BOARD,
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and

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FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR PETITIONER SEATTLE-FIRST NATIONAL BANK

Petitioner Seattle-First National Bank respectfully requests that this Court reverse the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 2, 1984.

OPINION BELOW

The opinion of the Ninth Circuit is reported at *Financial Institution Employees of America, Local No. 1182 v. NLRB*, 752 F.2d 356 (9th Cir. 1984). It is found in the Appendix to Seattle-First National Bank's Petition for a Writ of Certiorari at pp. 1a through 27a. The Ninth Circuit's order denying the Bank's petition for rehearing and rejecting its suggestion for rehearing en banc is reported at *Financial Institution Employees of America, Local No. 1182 v. NLRB*, 750 F.2d 757 (9th Cir. 1984), and is found in the Appendix to Seattle-First National Bank's Petition for a Writ of Certiorari at pp. 28a through 31a. The National Labor Relations Board's decisions and orders in this proceeding are reported at 241 N.L.R.B. 751 (1979), 245 N.L.R.B. 700 (1979), and 265 N.L.R.B. 426 (1982). They appear in the Appendix to Seattle-First National Bank's Petition for a Writ of Certiorari at pp 33a-54a.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on August 2, 1984. That court denied a timely petition for rehearing on December 26, 1984. Cert. App. 28a.[1] The National Labor Relations Board filed its Petition for a Writ of Certiorari on March 22, 1985. Seattle-First National Bank filed its Petition for a Writ of Certiorari on March 25, 1985. The Court on May 13, 1985, granted the writs and consolidated the cases for argument. J.A. 236-37. The Court has jurisdiction under 28 U.S.C. § 1254(1).

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[1] The decisions contained in the Appendix to Seattle-First National Bank's Petition for Writ of Certiorari will be cited "Cert. App." "R." designates references to the transcript of the hearing on the petition for amendment of certification. "Ex. E." and "Ex. P." refer to exhibits introduced by the Bank and Local 1182, respectively. "C.R." indicates a reference to the Board's Certified Record, filed with the Ninth Circuit. "J.A." designates references to the Joint Appendix filed by the parties to this proceeding.

STATUTES AND REGULATIONS INVOLVED

Section 1 of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, provides, in pertinent part:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7 of the Act, 29 U.S.C. § 157, provides, in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . . .

Section 9(a) of the Act, 29 U.S.C. § 159(a), provides, in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . . .

Section 102.60(b) of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.60(b), provides, in pertinent part:

Petition for clarification of bargaining unit or petition for amendment of certification under § 9(b) of the Act; who may file; where to file; withdrawal. A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer. . . .

STATEMENT OF THE CASE

This case arises out of the 1978 affiliation of the Firstbank Independent Employees Association (the "Independent"), the certified bargaining representative of Seattle-First National Bank's employees, with the Retail Clerks International Union (the "RCIU"). The right to vote in the election approving that affiliation was limited to members of the Independent, excluding more than 2,100 of the 4,790 Bank employees represented by the Independent. The question presented is whether the National Labor Relations Board acted rationally and in a manner consistent with the National Labor Relations Act when, because of the exclusion of nonunion unit employees from the vote, it refused to amend its certification to designate the RCIU affiliate as the exclusive bargaining representative of the Bank's employees.

The History of Representation at Seattle-First National Bank.

From 1938 until 1969, an independent association represented Seattle-First National Bank's employees. R. 15. The members of this association in 1970 voted to affiliate with the Marine Engineers Beneficial Association ("MEBA"). R. 16 (J.A. 5). Later that same year, however, the National Labor Relations Board conducted an election in which employees ousted MEBA in favor of the Independent, an unaffiliated entity representing only employees of Seattle-First National Bank, R. 118 (J.A. 21), which was certified as the exclusive bargaining rep-

resentative of unit employees on November 30, 1970. R. 17-18 (J.A. 6); Exs. P-1(a), P-1(b). In 1971, the Bank and the Independent negotiated a three year agreement. R. 18 (J.A. 6). The parties entered into a second three year contract in 1974, R. 18 (J.A. 6), which expired on October 30, 1977. R. 13 (J.A. 4). Bargaining between the Bank and the Independent for a third contract began in the summer of 1977, R. 25, and extended into early 1978. R. 178.

The Affiliation With the RCIU.

The Independent's Executive Council first considered an affiliation in 1974, when it recommended that the Independent affiliate with the Office and Professional Employees International Union ("OPEIU"). R. 19 (J.A. 7). After that effort failed in a 1974 election, R. 21 (J.A. 7), the Independent's Executive Council took steps "to make passing of the affiliation easier." R. 21-22 (J.A. 7). By the summer of 1977, after commencement of bargaining on a new contract with the Bank, R. 25, the Independent's leadership began discussing affiliation with a number of national labor organizations, including the United Auto Workers, the International Brotherhood of Electrical Workers, the International Longshoremen and Warehousemen's Union, and the Service Employees International Union, as well as the RCIU and the OPEIU. R. 28.

By letter dated January 6, 1978, the Independent gave notice of its intent to submit to its membership the question of an affiliation with the RCIU. Ex. P-6 (J.A. 72-74); R. 35-36 (J.A. 12-13). The Independent's constitution limited voter eligibility to members "in good standing on the last working day of the month prior to the notice of election." Ex. P-2, Art. III(C,D) (J.A. 52); R. 23-4. Nevertheless, the Independent encouraged nonmembers to join the union and vote in the affiliation election, provided they paid one month's dues prior to

January 19, 1978. Ex. P-6 (J.A. 74); R. 35-36 (J.A. 12-13). Unit employees who did not join the Independent by that date were excluded from the vote, R. 199, even though the Bank advised the union that applicable precedent required their participation. R. 250-51 (J.A. 48); Exs. P-8 (J.A. 75-76), P-18 (J.A. 90-91); R. 37-38 (J.A. 12), 56-57; Ex. P-23(d) (J.A. 92), R. 67 (J.A. 19). *See Jasper Seating Co.*, 231 N.L.R.B. 1025 (1977). As a consequence, although the Independent represented 4,790 unit employees, R. 74 (J.A. 19), only 2,624 ballots were mailed on February 5, 1978.[2] Ex. P-15 (J.A. 87), R. 50-1. Those voting in favor of affiliation numbered 1,206, 25.17% of the bargaining unit. Ex. P-14 (J.A. 84), R. 50-1. Those opposed (774) and those not permitted to vote (2,166) amounted to 2,940 employees, or 61.4% of the unit. *See id.* Based on these results, the Independent's officers applied for an RCIU charter, which was issued to Financial Institution Employees of America, Local 1182 ("Local 1182"), effective April 1, 1978. R. 55; Ex. P.17 (J.A. 88-89), R. 54 (J.A. 13).

The Amendment of Certification Proceedings.

On June 19, 1978, the new RCIU affiliate filed a petition with the Board to amend the 1970 certification of exclusive bargaining representative by substituting Local 1182 for the Independent. C.R. 1. The Bank resisted the petition, arguing *inter alia* that (1) the affiliation election could not serve as the foundation for an amended certification under *Jasper Seating* because the Independent had deprived more than 2,000 represented employees of the opportunity to vote, C.R. 4, pp. 30-35; and (2) the certification could not be amended without a Board-

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[2] It is not clear that the Independent had this many members. In January 1978, only 1,569 members paid monthly dues. R. 189-90. Voters included numerous individuals who had been on dues checkoff prior to October 15, 1977, but who had not subsequently paid dues. R. 109. The union did not know how many of these employees considered themselves members. R. 79.

conducted election because the affiliation had created a new and different union, raising a question concerning representation that only a Board election could resolve. C.R. 4, pp. 5-30.

In response, Local 1182 argued that only "those who have a membership interest" in the certified entity must be permitted to vote in an affiliation election. C.R. 7, p. 17. With respect to the Bank's assertion that Local 1182 was a "new and different" union from the Independent, the Union claimed that there was continuity between Local 1182 and the Independent, and that the affiliation resulted in no significant loss of local autonomy because the International only rarely exercised its power over locals. C.R. 7, pp. 23-26.

The Board initially rejected the Bank's arguments and on April 5, 1979, issued a decision amending the certification as requested. Cert. App. 49a-54a; *Seattle-First National Bank*, 241 N.L.R.B. 751 (1979). After the Bank refused to bargain with Local 1182, as required to obtain judicial review of the certification decision, Local 1182 filed unfair labor practice charges. The Bank defended by asserting the invalidity of the amended certification. C.R. 13. It offered petitions signed by hundreds of bargaining unit employees who were not union members, protesting their exclusion from the affiliation vote. C.R. 16 (Versoi Aff., Attachment D). The Bank also pointed to new evidence of a lack of continuity between the Independent and Local 1182. *Id.* (Versoi Aff., pp. 2-4) Despite this proffer, the Board held no evidentiary hearing on the unfair labor practice charges. On September 28, 1979, it issued a decision and order finding that the Bank had violated the Act by reason of the refusal to bargain. Cert. App. 39a-48a; *Seattle-First National Bank*, 245 N.L.R.B. 700 (1979).[3]

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[3] Before disposition of the unfair labor practice charge, the RCIU merged with the Amalgamated Meat Cutters and Butcher Workmen to form the United Food and Commercial Workers Inter-

The Bank sought review of the Board's decision in the Ninth Circuit. *Seattle-First National Bank v. NLRB*, No. 79-7515 (9th Cir.). While the Bank's petition for review was pending, the United States Court of Appeals for the Fifth Circuit issued its decision in *Amoco Production Co. v. NLRB*, 613 F.2d 107 (5th Cir. 1980), remanding that case to the Board for further consideration of factual issues related to the continuity of a bargaining representative after affiliation. Because the Board had relied upon *Amoco Production Co.* (*Amoco III*), 239 N.L.R.B. 1195 (1979), in granting Local 1182's petition for an amended certification, Cert. App. 52a, it asked that the Ninth Circuit remand this case for further consideration in connection with *Amoco*. *See* Cert. App. 34a.

On remand, the Board in *Amoco Production Co.* (*Amoco IV*), 262 N.L.R.B. 1240 (1982), held that union-conducted affiliation elections could not be accepted "as a basis for amending Board certifications" unless all bargaining unit employees were afforded "*the opportunity to vote.*" 262 N.L.R.B. at 1241, quoting *North Electric Co.*, 165 N.L.R.B. 942, 944 (1967) (Members Jenkins and Zagoria, dissenting) (emphasis in original). The Board majority wrote that its holding was compelled by the requirement "that the selection of a bargaining representative be made by the employees in the bargaining unit." *Id.* Following this reasoning, the Board in this case reconsidered its prior decision and held that the affiliation election could not serve as the foundation for an amended certification because it had excluded from the vote all unit employees who did not belong to the Independent. Cert. App. 33a-37a; *Seattle-First National Bank*, 265 N.L.R.B. 426 (1982). The Board revoked the amended certification and dismissed the unfair labor practice charge against the Bank. Cert. App. 34a.

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national Union (the "UFCW"). Cert. App. 39a-40a, n.1. This case presents no question concerning the propriety of that merger.

The Proceedings in the Court Below.

Local 1182 filed a petition for review of the Board's decision in the court below. On August 2, 1984, a panel of the court of appeals granted the petition and remanded the case, ruling that the Board could not refuse to amend its certification solely because the union had excluded many of the unit employees it represented from the decision to affiliate. Cert. App. 1a-27a. The panel found the Board's rule to be "irrational and inconsistent with the National Labor Relations Act" for three reasons. First, assuming the affiliation decision to be an "internal" union matter, the panel found that the Board's rule violated the policy of noninterference in internal union affairs. Cert. App. 11a-17a. Second, the panel concluded that permitting all employees to vote in affiliation elections would undermine stability in bargaining relationships. Cert. App. 17a-19a. Third, the panel found the Board's rule irrational because of its belief that the Board's previous rules with respect to affiliations were "effective" in protecting employees' statutory rights. Cert. App. 20a-23a.

Judge Wright dissented. Observing that the Fifth Circuit had enforced the Board's decision in *Amoco IV*, see *Local No. 4-14, OCAW v. N.L.R.B.*, 721 F.2d 150 (5th Cir. 1983), he expressed disagreement with each of the three premises of the panel majority's decision. Judge Wright found justification "within the statutory framework" for the Board's conclusion that an affiliation election is not exclusively an internal union affair. Cert. App. 25a-26a. In addition, he concluded that "[t]he Board's rule will promote stability more effectively than did its former position." Cert. App. 26a. Finally, rejecting the panel majority's finding that the Board's ruling was irrational, Judge Wright observed that "[t]he adequacy of the old procedure is irrelevant" in determining whether the Board acted in conformity with its statutory responsibilities. Cert. App. 26a-27a.

The Bank petitioned for rehearing on August 16, 1984, suggesting rehearing en banc. On December 26, 1984, the Ninth Circuit denied the petition for rehearing and rejected the suggestion for en banc consideration. Cert. App. 28a. Judge Kennedy, joined by Judges Sneed, Anderson and Hall, and Judge Norris, joined by Judges Poole and Hall, dissented from the denial of rehearing en banc. Cert. App. 29a-31a. Both dissents referred to and expressed agreement with the Fifth Circuit's approval of the Board's rule in *Local No. 4-14, OCAW v. NLRB*, 721 F.2d 150. Cert. App. 29a, 31a.

SUMMARY OF ARGUMENT

Under the National Labor Relations Act, a labor organization freely selected by a majority of employees in a bargaining unit serves as the exclusive representative for all employees in that unit. 29 U.S.C. § 159(a). One of the Board's statutory duties is to "certify the results" of elections conducted to determine if a union has the required majority support. 29 U.S.C. § 159(c). Nothing in the Act requires the Board to amend its certification to reflect a subsequent union affiliation. Nevertheless, the Board has granted such amendments, subject to certain prerequisites.

This case concerns one of those prerequisites. Because a certified union acts as the exclusive representative of all unit employees, not simply union members, the Board has determined that it will decline to amend a certification based upon an affiliation election in which only union members are permitted to vote. *Amoco IV*, 262 N.L.R.B. 1240 (1982), *aff'd sub nom. Local No. 4-14, OCAW v. NLRB*, 721 F.2d 150 (5th Cir. 1983). The Board has reasoned that the amended certification implicates the selection of employees' exclusive bargaining representatives, in which nonunion unit employees have a statutory right to participate. This reasoning finds ample support in the Act.

I. In the Act, Congress declared a national policy of protecting employees' "full freedom" in designating their bargaining representatives. 29 U.S.C. § 151. By this, Congress meant that employees would be guided by "[t]heir own best judgment, not that of someone else" in selecting organizations to speak on their behalf. *Hill v. Florida ex rel. Watson*, 325 U.S. 538, 541 (1945). The Board's decision in this case advances this policy, holding that all unit employees are entitled to exercise their own best judgment in deciding whether they wish to be represented by an established independent union or by a new local of a large, international labor organization.

In contrast, the decision of the court below impairs employee free choice. The court of appeals would deny nonunion employees the right to participate in a decision to seek an amended certification unless the Board first determines that the new affiliate is substantially different from the certified entity. This reasoning permits the Board to determine when nonunion employees may exercise their "full freedom" to select a bargaining representative. The court below thus ignored the real possibility that differences between unions—such as the fact that one is independent, while another is affiliated with an international body—may be vitally important to employees, although appearing less significant to outsiders such as the Board. Only by allowing employees to express their views on these issues, as the Board's decision does, may employees' "full freedom" be protected.

II. The Board's rule on affiliations also enhances prospects for industrial peace, in conformity with express Congressional intent. Congress clearly stated its belief that stability in labor relations, one of the primary goals of the Act, can be achieved only by assuring employees the fullest possible freedom in selecting their bargaining representatives. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 280 (1956). A policy of excluding

nonunion employees (who here comprise more than 45% of the bargaining unit) from an election that will serve as the basis for an amended certification runs the real risk of forcing the employer to bargain with a union that does not enjoy, and never has enjoyed, majority support. A stable collective bargaining relationship cannot be built on such a shaky foundation.

Oddly, the court below found that the Board's rule impaired labor stability, pointing out that incumbent unions enjoy various presumptions designed to restrict challenges to their majority status. Nothing in the Board's decision, however, disturbs these presumptions. In the absence of bargaining unit consent to a change, the Board's rule permits the incumbent union to continue in its representational capacity. If represented employees do consent, on the other hand, the Board may allow an amended certification. Following these simple procedures enhances stability by assuring the parties that the true representative of all unit employees is speaking on their behalf.

III. The Board's rule does not intrude upon any legitimate internal union interest. The union here sought an amended certification to cement its claim to representation of the Bank's employees, not for any internal purpose. Thus, the Board did not have occasion to consider the internal effects of the affiliation vote. Rather, recognizing the distinction between a union's capacity as an association of dues-paying members and its capacity as a statutory bargaining agent, the Board considered only Local 1182's claim that it was the exclusive representative for all Bank employees. That was not an internal union matter.

Furthermore, to the extent the effort to amend the Board's certification implicates internal union interests, they must be subordinated to the Act's primary policy of protecting employee freedom. *NLRB v. Savair Mfg. Co.*, 414 U.S. 270, 279 (1973). A union cannot excuse

its violation of national labor policy simply by claiming that enforcement of that policy would intrude upon "internal" union affairs. *Scofield v. NLRB*, 394 U.S. 423, 430 (1969). That is especially true here, where the union has no legitimate internal interest in excluding nonunion unit employees from participation in the decision to seek an amended certification of their exclusive bargaining representative.

IV. Because the Board's rule involves the selection and certification of bargaining representatives, it is entitled to considerable deference. *NLRB v. A. J. Tower Co.*, 329 U.S. 324, 330 (1946). The court below, however, conducted a *de novo* review of the issues, reweighing each of the considerations addressed by the Board. In particular, the court of appeals improperly reassessed the "need" for the Board to adopt its rule protecting employee free choice. *See NLRB v. Weingarten, Inc.*, 420 U.S. 251, 266 (1975). Standing alone, this failure to show due deference to the Board's administrative expertise requires reversal of the decision below.

ARGUMENT

I. BY REQUIRING EVIDENCE OF EMPLOYEE CONSENT AS A PREREQUISITE TO AMENDMENTS OF UNION CERTIFICATIONS, THE BOARD'S RULE FURTHERS THE FUNDAMENTAL NATIONAL LABOR POLICY PROTECTING THE "FULL FREEDOM" OF EMPLOYEES TO SELECT THEIR BARGAINING REPRESENTATIVES.

Congress has declared that national labor policy requires protection of "the exercise by workers of *full freedom* of association, self-organization, and designation of representatives of their own choosing . . ." § 1 of the Act, 29 U.S.C. § 151 (emphasis added). Congress thereby expressed its intent that employees, like any voters in a democracy, be guided solely by their own judgment in choosing their statutory bargaining representative, free

from the dictates of those who might profess to have their best interests at heart. The decision below would, perhaps unwittingly, undermine employees' "full freedom" of choice by conferring upon the Board and the courts, rather than upon affected employees, the right to determine whether an affiliation effects a change in bargaining representative sufficiently significant to warrant an expression of employee consent. The Board's rule, on the other hand, appropriately vests in all unit employees the power to express their views on the significance of the change that affiliation would effect.

A. This Court Has Recognized Employees' Absolute Right to Choose Their Bargaining Representatives.

This Court has not hesitated to protect the unfettered right of employees to choose the entity that will act as their exclusive bargaining agent. In *Hill v. Florida ex rel. Watson*, 325 U.S. 538 (1945), the Court considered a Florida statute that imposed licensing and reporting requirements on unions and their business agents. Justice Black, writing for the majority, began his analysis by emphasizing the broad scope of employee discretion that Congress intended:

> The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining, and to protect the "full freedom" of workers in the selection of bargaining representatives of their own choice. . . . Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide.

325 U.S. at 541. The Court thus held that the Wagner Act preempted the Florida statute, concluding that "the 'full freedom' of employees in collective bargaining which Congress envisioned as essential to protect the free flow of commerce among the states would be, by the Florida statute, shrunk to a greatly limited freedom." 325 U.S. at 542.

Justice Black's expansive view of employee freedom in designating bargaining representatives remains a vital principle of national labor policy, despite some later limitations on a union's right to select its officers and agents. *See DeVeau v. Braisted*, 363 U.S. 144, 147 (1960) (upholding restrictions on unions' right to employ convicted felons). In *Brown v. Hotel Employees Local 54*, 104 S. Ct. 3179 (1984), for example, the Court upheld a New Jersey statute that restricted the class of persons eligible to hold office in unions representing casino employees. Although characterizing the right to select union officials as "less than absolute," the majority emphasized "that this conclusion does not implicate the employees' express § 7 right to select a particular labor union as their collective bargaining representative . . . ." 104 S. Ct. at 3190. Justice White, joined in dissent by Justices Stevens and Powell, agreed that employees have an "absolute § 7 right to choose which labor organization will act as their bargaining representative . . . ." 104 S. Ct. at 3192-93, n.3. The dissenters observed that even "a nonunion employee in an agency shop retains his § 7 right to participate in the selection of the bargaining representative," though he may forfeit his right to participate in certain decisions delegated to that representative. *Id.*

The fact that an employee chooses not to join a union, then, does not limit his "full freedom" to choose a bargaining representative. *See* § 7 of the Act, 29 U.S.C. § 157 (granting employees "the right to refrain from" union activities). Unlike the selection of union officers, this fundamental right cannot be contingent upon union membership. In contrast to the decision below, the Board's ruling here recognized this principle.

B. The Rule Applied by the Board in This Case Protects Employees' Full Freedom in Designating Their Bargaining Representatives.

Section 7 of the Act implements the Congressional policy protecting employees' "full freedom" of association

by guaranteeing their right "to bargain collectively through representatives of their own choosing." 29 U.S.C. § 157. Representatives chosen freely

> by the majority of employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining . . . .

§ 9(a) of the Act, 29 U.S.C. § 159(a). Although less formal methods exist, a Board-conducted election is the preferred method of determining exclusive representative status. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969). Thus, when the Board finds that "a question of representation exists"—that is, when it determines that there is a question "as to a claimed majority status" of a labor organization, *Standard Oil Co.*, 127 N.L.R.B. 656, 657 (1960) (Member Leedom, dissenting)—it will supervise an election to resolve the question. *See* § 9(c) of the Act, 29 U.S.C. § 159(c). The Board then "certifies" the results of this election, removing doubt as to the representative's status. *Id.*

The Act neither provides for nor mentions "amended" certifications of exclusive bargaining representatives after an affiliation. However, the Board traditionally has granted amendments without a supervised election provided there is an "absence of a question concerning representation." 29 C.F.R. § 102.60(b); *see* 29 C.F.R. § 101.17 (allowing amendment of certification when "there is no question concerning representation"). Although this rule, which the court of appeals accepted (*see* Cert. App. 8a), does not demand adherence to any rigid formula, it logically requires that the Board satisfy itself that the amendment does not present a question as to the majority support of the union seeking certification. *See J. H. Day Co.*, 204 N.L.R.B. 863 (1973) (amended certification granted only when affiliation procedures "substantially eliminate the possibility of a question concerning representation"). The Board's duty to

protect employee free choice compels this requirement. Because the Board may issue a statutory certification only upon being assured that a bargaining representative has been freely chosen by a majority of unit employees, the petitioning union must show that the change in designation accomplished by the amendment enjoys majority support.

When an affiliation takes "place under circumstances that do not indicate the change reflected a majority view," *North Electric Co.*, 165 N.L.R.B. 942 (1967), the Board has found a question concerning representation, *i.e.*, a doubt as to majority status. Accordingly, "the factor of primary importance is whether the employees have had the opportunity to pass on the change of representative." *Newspapers, Inc.*, 210 N.L.R.B. 8, 9 nn.3-4 (1974), *enf'd* 515 F.2d 334 (5th Cir. 1975). If that opportunity has not been given, the Board cannot conclude that the petitioning union has the majority support that Congress required as a prerequisite to statutory certification. This uncertainty may be resolved only through a Board-conducted election under Section 9(c) of the Act, 29 U.S.C. § 159(c).[4]

The Board has labeled this examination of employee support a "due process" inquiry. It has used "due proc-

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[4] In addition, the Board will inquire into the "continuity" between the certified union and the union seeking the amended certification. If that inquiry shows that the petitioner is a "new and different" union, the Board will find a question concerning representation that requires it to conduct a supervised election before issuing its certification. *See Standard Oil Co.*, 127 N.L.R.B. 656 (1960). At least one court of appeals has indicated that the affiliation of an independent with a large international union creates a "new and different" union. *See American Bridge Div., United States Steel Corp. v. NLRB*, 457 F.2d 660 (3d Cir. 1972); *Sun Oil Co. of Pennsylvania v. NLRB*, 576 F.2d 553 (3d Cir. 1978). Because the Board found the scope of franchise too limited in this instance, it did not reach the continuity question in its 1982 decision. The court of appeals declined to do so as well. Cert. App. 6a, n.4.

ess" not in its constitutional sense, but as a shorthand method of describing its need to assure itself that a union's affiliation procedures were not "so lax or 'substantially irregular' as to negate the validity of the election . . ." *Hamilton Tool Co.*, 190 N.L.R.B. 571, 575 (1971). If due process has been satisfied in an affiliation vote, the Board may not need to conduct its own election, with the more stringent "laboratory conditions" it imposes to guarantee full freedom of choice. *See General Shoe Corp.*, 77 N.L.R.B. 124, 127 (1948) (Board elections must "provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees"), *enf'd*, 192 F.2d 504 (6th Cir. 1951), *cert. denied*, 343 U.S. 904 (1952).

Peculiarly, however, a majority of the Board initially held, over vigorous dissent, that due process could be satisfied even if a union-conducted affiliation vote excluded unit employees who were not union members. In *East Ohio Gas Co.*, 140 N.L.R.B. 1269 (1963), the Board first confronted the contention that all unit employees must be permitted to participate in a decision to seek an amended certification premised on an affiliation. The majority, over the dissent of Member Rodgers, sidestepped the issue of voting eligibility, stating simply that "where, as here, adequate opportunity to vote is provided to all those [union members] eligible to vote, the decision of the majority actually voting is binding on all." 140 N.L.R.B. at 1270 (footnote omitted). Even though *East Ohio Gas* pointedly failed to explain *why* the franchise in an affiliation election could be limited to union members, it was regarded as binding precedent, though never without dissent, for 14 years. *See, e.g., North Electric Co.*, 165 N.L.R.B. 942 (Members Jenkins and Zagoria, dissenting); *Hamilton Tool Co.*, 190 N.L.R.B. 571 (Member Jenkins, dissenting); *Bear Archery, Division of Victor Comptometer Corp.*, 223 N.L.R.B.

1169, 1172 (1976) (Member Walther, dissenting), *enforcement denied*, 587 F.2d 812 (6th Cir. 1977).

In 1977, the Board finally recognized the inherent contradiction in requiring due process for some unit employees, but not for others. It therefore held that due process required that nonunion unit employees be "given an equal unqualified opportunity to participate in [an] affiliation vote." *Jasper Seating Co.*, 231 N.L.R.B. at 1026. The Board thus announced that it would *not* amend certifications based upon affiliation votes that excluded nonunion employees.[5]

Jasper Seating constituted the governing precedent when Local 1182 conducted its limited franchise election in early 1978. However, by the time this case reached the Board in 1979, it had overruled *Jasper Seating* in *Amoco III*, 239 N.L.R.B. 1195 (1979), *remanded* 613 F.2d 107 (5th Cir. 1980), prompting vigorous protests by Board Members Jenkins and Penello. *See Providence Medical Center*, 243 N.L.R.B. 714, 716, 718 (1979) (Members Jenkins and Penello, dissenting separately). While this case was pending on remand in 1982, the Board returned to the rule of *Jasper Seating*, holding that all unit employees must be permitted to voice their preferences before the Board will change the statutory

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[5] Two of the five Board members denied an amended certification in *Jasper Seating* because the affiliation resulted from members-only voting. Board Member Penello concurred in rejecting the petition for an amended certification on the ground that a Board-conducted election was required when, as in *Jasper Seating*, "a small, independent local union . . . seeks to affiliate with an international union . . ." *Jasper Seating*, 231 N.L.R.B. at 1027. However, absent a clear change in the certified union's identity, Member Penello indicated that he "would not hesitate to agree" that an amended certification could be granted only based upon the results of a unit-wide vote. *Id.* In *Providence Medical Center*, 243 N.L.R.B. 714, 718 (1979) (Member Penello, dissenting), Member Penello expressly and without qualification condemned "members only" voting.

certification of their exclusive bargaining representative. The Board reasoned:

> If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted that employees in a bargaining unit cannot be compelled to vote, they can, at the very least, be afforded *the opportunity to vote.* It appears basic to the collective bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection.

Amoco IV, 262 N.L.R.B. at 1241, quoting *North Electric Co.*, 165 N.L.R.B. at 944 (Members Jenkins and Zagoria, dissenting) (emphasis in original).

The Board found its rule necessary to protect the "basic" right of employees to choose their representative. To hold otherwise, the Board majority observed, "would deprive *employees* of the benefits guaranteed by the Act." *Id.* at 1242, n.12 (emphasis in original). This case, in which more than 45% of bargaining unit employees were deprived of the opportunity to decide whether they desired representation by an RCIU affiliate, graphically illustrates the deprivation that the Board's rule avoids. Because those employees had a statutory right to express their views, the Board's decision is firmly grounded in the Act.

C. The Decision Below Impairs Employees' Absolute Right to Choose Their Bargaining Representatives.

The simplicity and logic of the Board's rule cannot be directly assailed. Rather than do so, the decision below concluded that procedures followed prior to *Jasper*

Seating "adequately protected the critical rights of employees to be represented by a union selected by a majority of employees in the unit . . . ." Cert. App. 20a. In fact, however, the procedures that the court of appeals advocated would curtail employees' "critical rights" by allowing unions, the Board, and the courts to decide on an *ad hoc* basis that it is unnecessary to permit the exercise of those rights.

The court below relied upon the Board's inquiry into what is commonly known as "continuity of representation" to protect employees' freedom of choice.[6] *See* n.4, *supra*. Even when employees have acquiesced in affiliation through privately conducted elections, the Board has refused to amend its certification if the purported successor lacks continuity with the certified entity—*i.e.*, if it is a "new and different union." *See Standard Oil Co.*, 127 N.L.R.B. 656 (1960); *see also Independent Drug Store Owners*, 211 N.L.R.B. 701, 702, n.4 (1974), *aff'd sub nom. Retail Store Employees, Local 428 v. NLRB*, 528 F.2d 1225 (9th Cir. 1975) (amended certification denied despite approval of merger by unit employees). When continuity of representation is absent, the Board has held that a question concerning representation exists and the integrity of its certification requires it to supervise an election, rather than accepting the result of a less formal tally.

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[6] The court of appeals also suggested that decertification procedures adequately protect employees' Section 7 rights. Cert. App. 21a. This notion is repugnant to the Act. The court's rationale would justify virtually any impairment of free choice simply because employees "genuinely disgruntled" by their deprivation of rights could invoke decertification remedies. Cert. App. 21a. The cumbersome decertification procedure is appropriate only *after* unit employees have freely selected their representative. *See* 29 U.S.C. § 159(c)(1)(A)(ii) (decertification petition may assert that certified union "no longer" enjoys majority support). The statute presumes an initial unfettered expression of views, which is precisely what the Board's rule protects.

The court below asserted that this procedure protected employees by requiring an election whenever the Board concluded that affiliation created a "new" union. Cert. App. 20a. Thus, the court would prohibit the Board from requiring evidence of employee consent so long as it finds only an "insubstantial change in the certified bargaining representative" as a result of affiliation. Cert. App. 20a. Under the decision below, then, nonunion employees do not have *full* freedom to participate in a change in their designated representative. Instead, their freedom is "shrunk to a greatly limited freedom," *Hill v. Florida ex rel. Watson*, 325 U.S. at 542, which may be exercised only when the Board decides that, in *its* view, the amended certification would accomplish such a substantial change as to raise a question concerning representation.

The court of appeals did not explain why the Board, rather than affected unit employees, should be empowered to assess the change in representative. The Act provides no explanation. Rather, it contemplates that employees will have unfettered freedom of choice, that "[t]heir own best judgment, not that of someone else, [will] be their guide." *Hill v. Florida ex rel. Watson*, 325 U.S. at 541. In exercising this judgment, employees have the right to decide that they wish to be represented only by a nonaffiliated, independent union,[7] or by a local of one international rather than another. The Act's protection of that right cannot be nullified by an administrative de-

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[7] The importance of this consideration is evident here, given this unit's expressed desire to remain independent. In 1970, the Bank's employees rejected representation by an affiliate of a national body; the Independent's members in 1974 rejected affiliation with the OPEIU. R. 16-21 (J.A. 5-7). The Board, the International, and the courts are hardly in a position to determine what characteristics of these rejected organizations were significant in the eyes of unit employees. Such a determination would be necessary, however, to find disenfranchisement proper whenever the Board decides that no "substantial" change results from affiliation.

termination that similarities betwen a certified union and a newly affiliated organization assure represented employees of "continuity" of representation. The Act entitles *all* employees "to bargain collectively through representatives *of their own choosing*," § 7 of the Act, 29 U.S.C. § 157 (emphasis added), not through representatives that are, in the Board's judgment, "just like" the chosen representatives.

Thus, in this case, it is not for Local 1182, the Board, or the courts to decide whether the difference between the Independent and Local 1182 is significant enough to warrant a difference in employee support. All unit employees have "full freedom" to participate in that decision. By depriving nonunion unit employees of that statutory freedom, the decision below would sharply curtail their fundamental Section 7 rights in violation of the principles enunciated by this Court in *Hill*.

II. BY ASSURING THAT BARGAINING REPRESENTATIVE CERTIFICATIONS WILL NOT BE CHANGED WTHOUT EVIDENCE OF EMPLOYEE SUPPORT, THE BOARD'S RULE FURTHERS THE NATIONAL LABOR POLICY IN FAVOR OF MINIMIZING INDUSTRIAL STRIFE.

Congress passed the National Labor Relations Act to "mitigate and eliminate" the "obstructions to the free flow of commerce" that resulted from unbridled industrial strife. § 1 of the Act, 29 U.S.C. § 151. Principles of majority rule and freedom of association permeate the Act in recognition of the fact that labor peace can best be achieved by allowing workers to bargain through exclusive representatives chosen and supported by a majority of the represented employees. By enhancing full freedom of association, the Board's rule with respect to affiliations thus assists in minimizing the likelihood of industrial strife. In reaching a contrary conclusion, the court below improperly focused not upon the effects of

the rule, but upon the consequences of this union's violation of the rule in conducting its affiliation election.

A. Industrial Peace Can Be Achieved Only by Guaranteeing the "Full Freedom" of Employees to Select Their Bargaining Representatives, a Policy Furthered by the Board's Rule in this Case.

The efficacy of collective bargaining in minimizing labor strife depends upon the bargaining representative's ability to speak as the freely chosen voice of all employees. If the representative cannot do so, union commitments will lack the stabilizing effects contemplated by Congress. Thus, freedom of association helps achieve industrial peace because it permits the employer to enter into binding agreements with one exclusive representative selected by a majority of unit employees.

This Court has recognized that industrial peace and labor stability are inextricably intertwined with the "full freedom" of association that Congress conferred upon employees under the Act. In *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956), the Court observed that Section 1 of the Act bespeaks the "dual purpose" of eliminating "obstructions to the free flow of commerce" and encouraging collective bargaining. 350 U.S. at 279. Both of these policies, however,

> depend for their foundation upon assurance of "full freedom of association." *Only after that is assured* can the parties turn to effective negotiation as a means of maintaining "the normal flow of commerce and . . . the full production of articles and commodities . . . ." 61 Stat. 136, 29 U.S.C. § 141(b).

350 U.S. at 280 (emphasis in original). Thus, the Court continued, "[*p*]*rovided the selection of the bargaining representative remains free,*" union commitments to refrain from striking advance the national goal of stability. 350 U.S. at 280 (emphasis in original).

The Court in *Mastro Plastics* tacitly recognized that the nation cannot buy industrial peace by sacrificing employee freedom. A labor organization lacking the freely expressed majority support of those whom it would represent cannot bring to its relationship with an employer the kind of stability necessary to "mitigate and eliminate" obstructions to commerce. The Board's rule on affiliations, by assuring that no exclusive bargaining agent will be certified until it demonstrates its ability to speak on behalf of the represented employees, thus advances the goal of stabilizing industrial relations.

B. The Board's Policy, if Honored, Will Also Enhance Stability in Bargaining Relationships.

In considering the goals of stability and industrial peace, the court below focused not upon freedom of association, but upon "maintaining stability in the bargaining representative . . ." Cert. App. 17a. The court of appeals observed that certain presumptions employed by the Board, with judicial approval, protect certified unions from continual questioning of their representative status. For example, labor organizations enjoy an irrebuttable presumption of majority status during the year following their certification, and a rebuttable presumption thereafter. *See Brooks v. NLRB*, 348 U.S. 96 (1954). Furthermore, "to protect the bargaining atmosphere," efforts to decertify an incumbent union will not be entertained during the life of a collective bargaining agreement. *See Pioneer Inn Associates v. NLRB*, 578 F.2d 835, 839 (9th Cir. 1978). Even after a contract's expiration, the Board will process a decertification petition only upon a request by at least 30% of the bargaining unit. 29 C.F.R. § 101.18.[8]

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[8] This 30% threshhold also applies to requests for an initial representation election. *See* 29 C.F.R. § 101.18(a) ("the conduct of an election serves no purpose . . . unless the petitioner has been designated by at least 30% of the employees"). Here, of course, only 25.17% of the unit voted for affiliation. Such minimal unit support

The principles underlying these rules do not support the conclusion reached by the court below. Each of these presumptions provides a measure of protection to the representative status of an incumbent union freely selected by a majority of bargaining unit employees. Nothing justifies the extension of these protections to a newly-affiliated union seeking *to obtain* certified status under Section 9(c) of the Act, 29 U.S.C. § 159(c), especially when a large segment of the represented employees has had no opportunity to participate in the affiliation decision. Rather, an amended certification logically requires a showing that the uncertified affiliated entity is entitled to the presumption of majority support reserved for the certified representative.[9]

In requiring this showing, the Board's rule on affiliations does not undermine the stability of bargaining relationships. The Board may allow amended certifications if the represented employees consent. In the absence of consent, the already certified entity will continue in its representational capacity. If these procedures are followed, all parties rest assured that the true employee representative is acting on unit employees' behalf. In this sense, the Board's "rule will promote stability more effectively than did its former position." Cert. App. 26a (Wright, J., dissenting). Disruption would occur only if

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would have been insufficient to warrant even an election to decertify the Independent or to certify Local 1182. For some reason, however, the court below believed this scant evidence of support sufficient to justify substituting Local 1182 for the Independent without further inquiry into employee sentiment.

[9] The court of appeals required no such showing. In finding that the Board's rule failed to advance the national goal of stability in labor relations, the court below simply asserted that it "effectively decertifies the newly affiliated union before any inquiry is conducted into the character of the union or its support among employees." Cert. App. 18a. This assertion begs the question. Whether the affiliated union was entitled to certification was the very issue presented by the affiliate's petition to the Board.

the affiliate attempted to proceed as bargaining representative notwithstanding an unwillingness to adhere to the Board's procedures or an inability to garner majority support in the bargaining unit.

Significantly, the court below did not point to single instance in which *compliance* with the Board's rule would lead to a disruption in bargaining relationships. Rather, it relied solely upon a description of the consequences of *Amoco IV*, asserting that the Board's decision in that case undermined the "stability objectives" of the Act. Cert. App. 19a. Had the union in *Amoco IV* allowed all represented employees to vote, however, no disruption would have occurred.[10] The unit would have expressed its wishes on affiliation. If affiliation had been disapproved, the bargaining relationship with the certified entity could have continued. If, however, the unit approved affiliation, the matter would have proceeded in the manner advocated by the court below.

In this case, the Bank advised the Independent that *Jasper Seating*, 231 N.L.R.B. 1025, required the union to permit all unit employees to vote if it intended the affiliation election to serve as the basis for an amended certification. R. 250-51 (J.A. 48); Exs. P-8 (J.A. 75-76),

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[10] In the same vein, the court cited with approval a commentator's argument that the Board's rule "will lead to temporary denials of representation in some cases where a majority of all unit employees unquestionably desire [sic] affiliation." Cert. App. 20a, n.13, citing Hale, *Union Affiliations: Examination of the Governing NLRA Standards*, 3 Det. C. L. Rev. 709, 732-37 (1983). Hale, however, relied solely on the consequences of the decision in *Amoco IV*, where the union did not allow all unit members to vote. It is impossible to envision circumstances in which *following* the Board's rule will lead to the consequences described by Hale and the court below. On the other hand, the decision of the court of appeals, by authorizing the exclusion of more than 45% of the Bank's employees, obviously risks imposing an unwanted international affiliate on the bargaining unit. It is impossible to discern how such a result enhances stability.

P-18 (J.A. 90-91); R. 37-38 (J.A. 12), 56-57; Ex. P-23 (d) (J.A. 92), R. 67 (J.A. 19). Nevertheless, the union *chose* to ignore governing law and to exclude nonmembers from the proceedings leading up to the request for an amended certification. The rule did not disrupt the bargaining relationship. The rule could cause no instability so long as it was followed. Only the Independent's calculated disregard of known prerequisites to an amendment of certification caused this case to exist.[11] The court below thus erred when, by expressing concern over stability, it showed more solicitude for the Independent's conscious violation of the existing Board rule than it did for the important policies underlying that rule.

III. THE BOARD'S DECISION DOES NOT IMPROPERLY INTRUDE UPON ANY LEGITIMATE INTERNAL UNION INTEREST.

The Board has concluded that an effort to obtain its approval of an affiliation implicates its statutory certification responsibilities and does not involve solely internal union interests. As the Board observed in *Amoco IV*:

> If, in fact, union affiliations are internal union matters why does the Board even look to see if adequate

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[11] The record sheds no light on the union's motives in proceeding with an election limited to union members despite its knowledge of *Jasper Seating*. Common sense suggests, however, that a union confident of its majority support in the bargaining unit would not risk doubt as to its legitimacy by restricting the vote to union members. Many unions have chosen to avoid question as to their majority support by allowing all represented employees to vote on the affiliation decision, *The Williamson Co.*, 244 N.L.R.B. 953, 954 (1979); *New Orleans Public Service, Inc.*, 237 N.L.R.B. 919, 920 n.5 (1978), while other unions have, after obtaining membership approval, held another vote on the transfer of certification, open to all unit employees. *St. Vincent Hospital*, 238 N.L.R.B. 1525, 1526 (1978), *enf'd*, 621 F.2d 1054, 1059 (10th Cir. 1980); *Ocean Systems, Inc.*, 223 N.L.R.B. 857, 859-60 (1976), *enf'd sub nom. J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850 (5th Cir.), *cert. denied*, 439 U.S. 893 (1978); *Safway Steel Scaffolds Co.*, 173 N.L.R.B. 311 (1968).

> due process has been achieved? The obvious answer to that question is that once either party raises the question of affiliation . . . it is incumbent upon the Board, before it places its imprimatur on an affiliation election, to assure that that election meets adequate due process standards.

262 N.L.R.B. at 1241. The Board's holding recognized a distinction between a union's internal decision to affiliate and its effort to obtain governmental certification as employees' exclusive bargaining representative. When certification is at issue, whatever internal union interest is implicated by an affiliation election must give way to the paramount national labor policy in favor of full freedom of choice in the selection of bargaining representatives. A fatal flaw in the decision below was its failure to perceive that Local 1182 did not seek certification from the Board for internal reasons, but for the sole purpose of achieving governmental recognition as the exclusive bargaining representative of Seattle-First National Bank's employees. The union had no legitimate interest in excluding nonunion unit employees from the vote that it hoped would lead to this recognition.

A. The Union's Use of an Affiliation Election as the Premise for Its Request for an Amended Certification Was Not an Internal Union Matter.

The court of appeals reasoned that an amended certification proceeding implicates only "internal union" interests, provided there is "continuity" between the certified union and the newly affiliated union. It therefore accepted "the union's characterization of all affiliation decisions as internal union affairs . . . ." Cert. App. 11a-12a, n.9.[12] Relying upon case law pertaining to disci-

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[12] As a practical matter, the RCIU did not perceive the affiliation to be an "internal" affair of the Independent. Rather, the RCIU's president saw the International's assimilation of the Independent as an opportunity to "further the organization of bank employees generally by the RCIU." Ex. P-3 (J.A. 70), R. 31 (J.A. 10).

pline of union members, *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *NLRB v. Boeing Co.*, 412 U.S. 67 (1973), election of union officers, *Steel Workers v. Sadlowski*, 457 U.S. 102 (1982), and limits on piece work pay received by union members, *Scofield v. NLRB*, 394 U.S. 423 (1969), the court below noted the policy against interference in internal union affairs. It rejected the Board's decision here as violating that policy. Cert. App. 11a-17a.

However, Local 1182's attempt to obtain the Board's ratification of its asserted status as exclusive bargaining representative was not sought for "internal" purposes. Instead, the newly affiliated union aimed to force the Bank to bargain with it and to obtain "certain statutory benefits under Section 8(b)(4) of the Act" that derive from certification. *National Electric Coil Division of McGraw-Edison Co.*, 199 N.L.R.B. 1017 (1972); *see* 29 U.S.C. § 158(b)(4)(B) (exempting certified union from certain charges of secondary activity); 29 U.S.C. § 158(b)(4)(C) (precluding pressure on employer to bargain with any union other than certified union); *see also* 29 U.S.C. § 158(b)(7) (allowing certified union to conduct recognitional picketing). The International's affiliate thus intended to ensconce itself as the exclusive representative of all of the Bank's employees, not simply union members, and to sharply limit the ability of other unions, including grass roots organizations similar to the Independent, to challenge its status.[13] To achieve this goal, Local 1182 petitioned for a change in the Board's statutory certification.

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[13] Once certified, the affiliated entity could use as a shield the presumptions that the court of appeals identified as protecting an incumbent bargaining representative. *See* pp. 25-26, *supra*. If the reasoning of the court below were correct, then, the same policies that aid the affiliate in replacing the Independent could, after the affiliate is entrenched, be used to discourage an independent association from efforts to represent the Bank's employees.

In disposing of this petition, the Board did not, as the court below appeared to assume, even purport to consider the effect of an affiliation on the union in its capacity as a voluntary, private organization. The Board's ruling dealt only with the affiliate's request that the Board certify Local 1182 as the statutory representative of all unit employees. *See* Cert. App. 30a (Kennedy, J., dissenting from denial of en banc rehearing) (finding that this characterization of the issue was rational). This request, by definition, was entirely *external* to the union's powers as a voluntary association of dues paying members. By ignoring this fact, the decision below blurred "the important distinction between a union's status as a voluntary organization and its status as a certified or recognized bargaining agent." R. Williams, *NLRB Regulation of Union Bargaining Rights When Affiliation Changes* 24 (U. of Pa. 1982).

The failure of the court of appeals to differentiate between a union's dual roles explains its otherwise unaccountable reliance on *Allis-Chalmers*, *Boeing*, *Sadlowski*, and *Scofield*, none of which relates to a union's representative status.[14] Each of those cases concerned a

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[14] This failure also led to a revealing logical error. The court below conceded that the Board must ascertain whether the petitioning union can demonstrate "the absence of a 'question concerning representation'" raised by its proposed certification amendment. Cert. App. 8a; *see* 29 C.F.R. § 102.60(b). In resolving this question, the court reasoned, the Board should inquire into whether "the [affiliation] decision reflected the wishes of the union's members." Cert. App. 8a; *see also* Cert. App. 22a (due process inquiry must "protect union members' rights . . . to be represented by the organization of their choice"). But the sentiment of union members is utterly irrelevant to questions concerning representation. The Act protects *employee* freedom of choice; it does not mention free choice of *union members*. Employees retain their Section 7 right to choose their bargaining representative notwithstanding their nonunion status. *See Brown v. Hotel Employees Local 54*, 104 S. Ct. at 3192-93, n.3 (White, J., dissenting). If one acknowl-

union's authority over its members. In contrast, use of an affiliation election as the lever for a certification amendment brings into play the union's role as exclusive representative for *all employees*, members and nonmembers alike. *See* § 9(a) of the Act, 29 U.S.C. § 159 (a); *Abood v. Detroit Board of Education*, 431 U.S. 209, 221 (1977) (duty of fair representation extends to nonunion employees). When a union is designated to serve in this capacity, "the individual employee's power to order his own relations with his employer" is extinguished; the chosen union under federal law may bind even a nonmember to waivers of statutory rights, terms and conditions of employment, and provisions for processing his grievances.[15] *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. at 180. Consequently, the designation of an exclusive bargaining representative, whether through an amendment of certification or some other procedure, "affects the interests of all employees in the bargaining unit directly and equally, whether they choose to be union members or not." Williams, *supra* at 25. An affiliation vote thus is no longer an internal union affair once that vote is offered to the Board as justifying an amended certification.

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edges that evidence of consent of some employees is required, the Act demands that *all* unit employees have the opportunity to express their views.

[15] These "principles of majority rule and exclusive representation" are unique to this country's labor laws. Bok, *Reflections on the Distinctive Character of American Labor Laws*, 84 Harv. L. Rev. 1394, 1397 (1971). Absent these characteristics of the Act, exclusion of nonunion employees from an affiliation decision might not be so troublesome, for the disenchanted employee could choose to bargain through other means. That option is not available under the Act. Disenchanted union members, on the other hand, may freely escape the "internal" consequences of a decision to affiliate or not to affiliate simply by resigning from the organization. *See Pattern Makers' League of North America v. NLRB*, No. 83-1894 (U.S. June 27, 1985) (protecting members' right to resign).

B. Even If the Amendment of Certification Implicated Internal Union Interests, the Board Appropriately Accommodated Those Interests and the "Full Freedom" of Employees in Selecting Their Bargaining Representatives.

Even if an amendment of certification implicates internal union interests, however, the court below improperly sacrificed the national labor policy in favor of employees' "full freedom" of choice in order to protect those interests. In stark contrast, the Board's rule accommodates a union's legitimate interest in managing its affairs with the unquestioned right of employees to participate in selecting their exclusive bargaining representatives. Only the Board's approach conforms to the Act's mandate.

When internal union interests clash with the Section 7 right to designate bargaining representatives, this Court has found the balance to tip in favor of protecting employee free choice. Such a result should surprise no one, for the Act by its terms protects employees, not unions. In *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270 (1973), for example, a union waived initiation fees for employees signing recognition slips during an organizational campaign. Involving the financial relationship between the union and its members, the union policy implicated a "legitimate" internal union interest in removing an "artificial obstacle" to union membership. 414 U.S. at 273-74, n.4, quoting *Amalgamated Clothing Workers v. NLRB*, 345 F.2d 264, 268 (2d Cir. 1965). But because this interest could be met without serving "the additional purpose of affecting . . . the election," *id.*, this Court held that the union's policy impermissibly conflicted with "[t]he right of a free choice . . . inherent in the principles reflected in § 9(c)(1)(A)." 414 U.S. at 279.

Similarly, a union's internal interest in affiliation need not impair employees' statutory right to participate in selecting their bargaining representatives. The Board's

ruling here preserves a union's control over the decision to affiliate or not to affiliate as an internal matter. Cert. App. 26a (Wright, J., dissenting). Unlike the rule adopted by the court below, however, it also preserves employees' right to consent to or refuse to support a change in the statutory certification of their exclusive collective bargaining representative. The Board's accommodation of these two rights was within its discretion—indeed, it was compelled by the Act.

The Board's decision protects yet another statutory freedom recognized in *Savair*. The Court there observed that the initiation fee waiver policy, by inducing union membership, might conflict with Section 7's guarantee of the right to *refrain* from concerted activity. 414 U.S. at 278-79. The same is true of a policy limiting affiliation votes to members, for it compels nonunion employees to join the union if they wish to air their views on an issue of representation. *See* Cert. App. 14a, n.10. To endorse this procedure "is to shut one's eyes to Section 7 [of the Act] . . . [which] clearly gives employees the choice . . . to refrain from engaging in [union] activities." *Amoco IV*, 262 N.L.R.B. at 1241.[16]

In these circumstances, simply concluding that an affiliation is an "internal" union affair, as did the court below, does not suffice to bar the Board from requiring a unit-wide vote before placing its stamp of approval on the results. *See* Note, *Union Mergers and the Amendment Certification Procedure*, 28 Cath. U. L. Rev. 587, 603 (1979) (protection of employees' Section 7 rights

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[16] The Board, with judicial approval, has held that an improper exclusion of nonmembers from a vote violates Section 8(b)(1)(A) of the Act, 29 U.S.C. § 158(b)(1)(A), by coercing them to join a union. *Branch 6000, National Association of Letter Carriers*, 232 N.L.R.B. 263 (1977), *enf'd*, 595 F.2d 808 (D.C. Cir. 1978). Although no charge was filed against the union, it clearly engaged in this coercive practice by simultaneously limiting the franchise and urging nonunion employees to join the union in time to vote. Indeed, the Independent claimed to have gained 132 new members by using this tactic. R. 49 (J.A. 13).

justifies Board's rule even if affiliation is "internal" matter). Even when a rule applies solely to the conduct of union members, this Court has not found it exempt from Board scrutiny unless it "reflects a legitimate union interest, [and] impairs no policy Congress has imbedded in the labor laws . . ." [17] *Scofield v. NLRB*, 394 U.S. at 430.

In this case, the Independent's voting restriction went far beyond the rule considered in *Scofield*, affecting not only the conduct of union members, but also the statutory right of nonmembers to have a say in the change of the certification of their exclusive bargaining representative. No union has a legitimate interest in muting the voice of represented employees in such circumstances. To do so would thwart the national labor policy favoring free employee choice of bargaining representatives. Under *Scofield*, then, the Board is free to require, as it did here, that a union's effort to amend a statutory certification be accompanied by evidence that all represented employees had an opportunity to participate in the decision to seek the amendment.[18]

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[17] Significantly, *Scofield* permitted the Board in certain circumstances to scrutinize union rules in connection with unfair labor practice proceedings against a union. The justification for such scrutiny is far greater here, where the union itself has initiated the Board proceeding for the sole purpose of obtaining governmental approval of an affiliation.

[18] The Court recently rejected claims that the Board improperly intruded upon internal union affairs when it prohibited fines based on violations of union restrictions on resignation rights. *Pattern Makers' League of North America v. NLRB*, No. 83-1894 (U.S. June 27, 1985). It is important to note that the possibility of infringing upon legitimate internal union interests is not nearly as great here as it was in *Pattern Makers*. Dissenting in *Pattern Makers*, Justice Blackmun observed that rules which do "not vindicate any legitimate union interest" are not protected from scrutiny by the Board. Dissent, slip op. at 15, n.5, citing *Local 1384, UAW*, 227 N.L.R.B. 1045 (1977). The rule considered in *Pattern Makers*, Justice Blackmun argued, implicated a legitimate union interest in

IV. THE DECISION BELOW DEPARTS FROM THIS COURT'S DECISIONS BY SHOWING NO DEFERENCE TO THE BOARD'S ADOPTION OF SAFEGUARDS TO ENSURE THE FREE CHOICE OF BARGAINING REPRESENTATIVES.

The Board bears the responsibility of implementing the fundamental national policy of protecting employee freedom of choice. The means that it chooses in doing so rest within its sound judgment, subject to only limited review:

> Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees. [Citations omitted]

NLRB v. A. J. Tower Co., 329 U.S. 324, 330 (1946). Ignoring this fundamental precept of the Act, the court below independently balanced the Section 7 rights recognized by the Board against the assertedly conflicting policies of noninterference in union internal affairs and of preserving the stability of bargaining relationships. But this "balancing of interests . . . is the province of the Board, not the courts." [19] Cert. App. 25a (Wright, J.,

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maintaining solidarity during a strike. *Id.* at 12-13. The exclusion of nonunion unit employees from a decision to transfer the certification of *their* bargaining representative, on the other hand, advances no legitimate union goal. Instead, it impinges upon the express Congressional policy of employee free choice.

[19] The Board, not the courts, has the "primary responsibility" for accommodating conflicts between Section 7 rights and private property interests. *Hudgens v. NLRB*, 424 U.S. 507, 522-23 (1976). The Board, not the courts, must balance legitimate employer interests against employee rights under Section 7. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236 (1963). And the Board, not the courts, has the duty of weighing the Section 7 right of employees to make a "fair and free choice of bargaining representatives" against "the asserted interest of employees in avoiding the problems that union solicitation may present." *NLRB v. Wyman Gordon Co.*, 394 U.S. 759, 767 (1969).

dissenting). The court thus usurped the Board's function as guardian of employee free choice in violation of principles of judicial review established by this Court.

The court below concealed its *de novo* review by asserting the irrationality of adopting a new procedure when the old one is, in the court's judgment, "effective." Cert. App. 20a. The court of appeals thus found the Board's policy "irrational" simply because it failed to discern an improvement over prior Board rules. Such a broad use of the term "irrational" would, however, permit unfettered reassessment of every administrative decision and circumvent the deferential standard of review that this Court has prescribed in cases arising under the Act. As Judge Kennedy observed in dissenting from denial of en banc rehearing:

> Reason is a juridical concept essential for the constancy of our decisions, and we undermine it if we use the term "irrational" to express disagreement with a proposition supported by articulated premises within the boundaries of tenable argument.

Cert. App. 29a. *See also Hotel Employees and Restaurant Employees, Local 11 v. NLRB*, 760 F.2d 1006, 1009 (9th Cir. 1985) (Kennedy, J., concurring).

The refusal of the court below to acknowledge the limited scope of its task is reason enough to reverse its decision, for this Court has recognized that courts cannot reject Board policy based upon an independent appraisal of "need." In *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), for example, the court of appeals independently evaluated the need for the Board's new rule granting employees the right to union representation at investigatory interviews. This Court rejected the lower court's effort to substitute a judicial judgment for the Board's:

> The Court of Appeals impermissibly encroached upon the Board's function in determining for itself that an employee has no "need" for union assistance

> at an investigatory interview. . . . It is the province of the Board, not the courts, to determine whether or not the "need" exists in light of changing industrial practices and the Board's cumulative experience in dealing with labor-management relations.

420 U.S. at 266. The court below likewise "encroached upon the Board's function" when it concluded that, despite the recent surge in union affiliations and mergers,[20] there was no "need" for a unit-wide vote protecting the "full freedom" of unit employees to select their bargaining representatives. The Board, as the entity charged with issuing and policing certifications, has the duty of determining the procedures necessary to assure protection of statutory rights. The court below erred in failing to defer to the Board's determination of the need for its policy.

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[20] Organizing from above, without the benefit of Board procedures, has become disturbingly prevalent over the past five years. Between 1979 and June of 1984, more union mergers and affiliations occurred than in any similar period since 1955. Adams, *Labor Organization Mergers 1979-84: Adapting to Change*, 107 Monthly Lab. Rev. No. 9, Sept. 1984, at 21; *see also* Raskin, *Labor's Grand Illusions*, N.Y. Times Magazine, February 10, 1985, at 52, 67, col. 1. Most of these combinations were, like the affiliation here, "the result of an absorption of a small labor organization by a much larger one," including three absorptions by the international affiliate of Local 1182. Adams, *supra*, at 23-24. *See May Department Stores Co.*, 268 N.L.R.B. 979 (1984), *review pending sub nom. United Retail Workers Union Local 881 v. NLRB*, No. 84-2000 (7th Cir.) (applying *Amoco* rule to affiliation of multi-unit independent union with UFCW). This trend will not abate. According to a recent report of the AFL-CIO Committee on the Evolution of Work, "active AFL-CIO encouragement of mergers and guidelines as to appropriate and inappropriate mergers deserve a high priority." *Report of AFL-CIO Committee on the Evolution of Work on the Changing Situation of Workers and Their Unions, reprinted in* Daily Lab. Rep. (BNA) No. 37, at D-1, D-7 (February 25, 1985). Even that report concedes, however, that mergers "if poorly conceived, can cause a union to lose that identity which helps bind the members and the organization." *Id.*

CONCLUSION

For these reasons, the judgment and opinion of the United States Court of Appeals for the Ninth Circuit should be reversed. The Supplemental Decision and Order of the National Labor Relations Board should be reinstated.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD, PETITIONER

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FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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QUESTION PRESENTED

Whether the Board reasonably concluded that all bargaining unit employees, not just union members, must be afforded an opportunity to vote on the affiliation of their bargaining representative with an international union before the newly affiliated union has a right to continued recognition as the unit employees' exclusive bargaining representative.

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1493

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

No. 84-1509

SEATTLE-FIRST NATIONAL BANK, PETITIONER

v.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a)[1] is reported at 752 F.2d 356. The decisions and orders of the National Labor Relations Board (Pet. App. 27a-32a; 34a-42a; 45a-48a) are reported at 241 N.L.R.B. 751, 245 N.L.R.B. 700, and 265 N.L.R.B. 426.

JURISDICTION

The judgment of the court of appeals (Pet. App. 59a) was entered on August 2, 1984. A petition for rehearing was denied on December 26, 1984 (Pet. App. 60a). The petitions for certiorari were filed on March 21, 1985 (No. 84-1493) and March 25, 1985 (No. 84-1509) and were granted and consolidated on May 13, 1985 (J.A. 236-237). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, and of the Board's Rules and Regulations, 29 C.F.R. Pt. 102, are set forth *infra*, pp. 1a-3a.

STATEMENT

1. The Firstbank Independent Employees Association (FIEA) is an independent labor organization established to represent the employees of Seattle-First National Bank (Bank) in collective bargaining (J.A. 51-52). Only Bank employees are eligible to become FIEA members (J.A. 51-52). FIEA is governed by an executive council consisting of members elected from

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[1] "Pet. App." refers to the petitioner's appendix in No. 84-1493.

each of six regions, which correspond to the Bank's administrative subdivisions, and of FIEA's nine officers—president, six vice presidents (one for each region), a secretary, and a treasurer (J.A. 56-58). Collective bargaining agreements are negotiated by a committee appointed by the president and are ratified by majority vote of the membership (J.A. 61, 65). Dues are set by the executive council with the approval of the membership (J.A. 61). FIEA's constitution may be amended by a majority vote of its members (J.A. 66-67).

FIEA was certified by the Board in 1970 as the exclusive bargaining representative of a unit consisting of all the Bank's employees in the State of Washington (Pet. App. 27a; J.A. 4-5). FIEA negotiated successive collective bargaining agreements with the Bank, the last expiring in 1977 (J.A. 4). In 1977 the FIEA executive council decided to seek affiliation with the Retail Clerks International Union, and a union affiliation election was scheduled for February 1978. Prior to the election, all bargaining unit employees were informed of the proposed affiliation and told that only those who were FIEA members as of January 19, 1978, would be eligible to vote. Pet. App. 28a-29a; J.A. 11-12, 71-74. At the time of the election, 2624 of the 4790 unit employees were FIEA members; 1206 voted for affiliation and 774 voted against (Pet. App. 29a; J.A. 19-20, 83-87).

On April 1, 1978, FIEA was chartered by the international union as Financial Institution Employees of America, Local 1182 (hereafter the Union) (J.A. 13, 88-89). The charter expanded the Union's purpose to include "a thorough organization of employees [employed by] banks, credit unions or other financial institutions in the city of Seattle and the entire State

of Washington," opened the Union's membership to "any person * * * in accordance with the constitution and laws of the International Union," and required the Union to "conform[] to the Constitution and laws of the Retail Clerks International Constitution" (*ibid.*).[2]

2. Upon receiving its charter from the international union, the Union filed a petition with the Board, pursuant to Section 102.60(b) of the Board's Rules, 29 C.F.R. 102.60(b), seeking amendment of its certification to reflect its affiliation. The Board initially granted the amendment, rejecting the Bank's contentions that the affiliation vote was invalid because only FIEA members were allowed to vote,[3] and that the affiliation represented a substantial change

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[2] The international constitution requires affiliated local unions to have certain officers (president, secretary-treasurer, recorder, and at least three vice-presidents), defines their powers and duties, requires them to be elected by all the union's members, and provides that together these officers constitute an executive board that meets monthly to govern the union (J.A. 148-153). The constitution sets minimum initiation fees and monthly dues (J.A. 138, 159), requires that a certain portion of those fees and dues be remitted to the international union (J.A. 138-139), and allows the international union to impose assessments and to increase minimum dues and other fees (J.A. 109, 138-139, 159). Economic action such as strikes must be approved by a two-thirds vote of the affected membership and by the international president (J.A. 168-170). The international may impose a trusteeship on the local union (J.A. 115-116) and must approve any amendments to the local union bylaws (J.A. 146). At the time of the FIEA affiliation, the international union waived minimum initiation fees, monthly dues, and monthly per capita contributions for a period of one year (J.A. 69-70).

[3] This contention was correct under the law at the time the vote was taken (see n.15, *infra*).

in the certified bargaining representative which raised a doubt concerning the Union's continuing majority status that only a Board-conducted election could resolve. The Board relied on its then-recent decision in *Amoco Production Co. (Amoco III)*, 239 N.L.R.B. 1195 (1979), in which the Board had held that the affiliation of an independent union with an international union was an internal union matter on which nonmembers were not entitled to vote and that it did not provide a reason for doubting the union's continued majority status. Pet. App. 30a-32a.[4]

3. The Bank subsequently refused to recognize and bargain with the Union. Declining to reconsider its certification decision, the Board found that the Bank violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered the Bank to recognize and bargain with the Union. Pet. App. 34a-42a.

The Bank petitioned for review of the Board's order in the Ninth Circuit, and the Board cross-applied for enforcement. While the case was pending, the Fifth Circuit remanded the Board's decision in *Amoco III* for a statement of facts supporting the Board's conclusion in that case that there was substantial continuity between the pre- and post-affiliation labor organizations (*Amoco Production Co.* v. *NLRB*, 613 F.2d 107, 111-112 (5th Cir. 1980)). The Board requested remand of the instant case on the ground

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[4] After the certification proceedings before the Board, the Retail Clerks merged with the Amalgamated Meat Cutters and Butcher Workmen of North America to form the United Food and Commercial Workers International Union (UFCW), and the affiliated local's designation changed accordingly (Pet. App. 2a n.1). No issue concerning that merger is presented here.

that it was analytically dependent on *Amoco III*, and the court of appeals granted the Board's request on June 27, 1980. Pet. App. 3a.

4. On remand in the *Amoco* case, the Board, reversing its earlier position, concluded that affiliation is not a purely internal union matter but affects the right of all bargaining unit employees to choose their exclusive bargaining representative and that therefore all unit employees, not just union members, must be allowed to vote on the affiliation. *Amoco Production Co. (Amoco IV)*, 262 N.L.R.B. 1240 (1982) (Pet. App. 49a, 52a-54a).[5] The Board added that, absent a unit-wide vote, it would not reach the issue of whether there was sufficient similarity between the old and newly affiliated union so that the latter could be deemed a continuation of the former (Pet. App. 51a-52a).

With respect to the requirement that all unit employees be permitted to vote, the Board in *Amoco IV* explained that it is "basic to the collective-bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit" (Pet. App. 53a). The Board added that it was insufficient merely to afford unit members an opportunity to join the union and thereby participate in the affiliation vote—as *Amoco III* had done—because "Section 7 [of the Act] clearly gives employees the choice * * * to refrain from engaging in [union] activities" (Pet. App. 53a-54a).

On the basis of its decision in *Amoco IV*, the Board held that the affiliation election in the instant case was inadequate to justify amending the FIEA certifi-

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[5] In *Local 4-14, Oil Workers Int'l Union* v. *NLRB*, 721 F.2d 150 (5th Cir. 1983), the Fifth Circuit upheld the Board's decision in *Amoco IV*.

cation, and ordered that both the Union's petition to amend the certification and the refusal to bargain complaint against the Bank be dismissed (Pet. App. 45a-48a).

5. Upon the Union's petition for review, the court of appeals, with Judge Wright dissenting, concluded that the Board's rule in *Amoco IV* that all bargaining unit employees are entitled to vote in a union affiliation election was "irrational" and "inconsistent with * * * longstanding federal labor policy" (Pet. App. 10a). It thus remanded the case to the Board for further proceedings. The court found that "three reasons compel[led its] conclusion": (1) the new rule "is inconsistent with the longstanding federal labor policy * * * to avoid unnecessary interference in internal union affairs"; (2) the rule "is inconsistent with the strong national labor policy of maintaining stability in the bargaining representative"; and (3) the rule is "irrational because the Board's existing * * * procedures adequately protect employee rights without imposing on union members' rights or otherwise being inconsistent with the [Act]" (Pet. App. 10a-11a, 16a).

The court found that the new rule unjustifiably interferes with the union's internal decision to affiliate because it "mandates that a continuity determination may not be conducted until after a unit-wide vote is taken." In the court's view, "[t]his puts the cart before the horse" because the "interference" resulting from requiring such a unit-wide vote could be justified "[o]nly *after*" the Board finds an absence of continuity between the pre- and post-affiliation unions. Pet. App. 16a (emphasis in original). The court further found that the Board's new rule "runs completely counter to the policy of promoting stability

in the bargaining representative" (Pet. App. 18a), on the theory that, by allowing an employer to refuse to bargain with a post-affiliation union in the absence of a unit-wide vote, it "effectively decertifies [the] union before the Board can establish any basis for a union's loss of majority status." Pet. App. 19a. Finally, the court found that the new rule was "irrational" because the Board's previously followed "due process and continuity" procedures were adequate to protect the rights of union members and employees. In the court's view, the existing "due process" requirement—which permitted the affiliation vote to be restricted to union members, but which required that vote to be conducted in accord with minimum democratic guarantees—was designed, and in fact was adequate, to protect the rights of union members. And the "continuity requirement" was adequate to protect the rights of all bargaining unit employees (both union members and nonmembers) by requiring sufficient similarity between the pre- and post-affiliation unions to insure that a majority of the bargaining unit continued to desire representation by the post-affiliation union. Pet. App. 19a-21a.

Judge Wright, in dissent, noted that the Fifth Circuit had enforced the Board's order in *Amoco IV*, and agreed with that court that the new rule was a rational interpretation of the Act, which was within the Board's expertise and discretion in establishing procedures to ensure the fair and free choice of a bargaining representative by all employees (Pet. App. 24a-25a). He stated that, by reaching the opposite conclusion, the majority "engage[d] in the balancing of interests that is the province of the Board, not the courts" (*id.* at 25a).

The court denied the Bank's petition for rehearing and suggestion for rehearing en banc, with six judges

dissenting from the denial of en banc rehearing (Pet. App. 60a-62a).

SUMMARY OF ARGUMENT

Section 7 of the National Labor Relations Act guarantees employees the right to bargain with their employer through representatives of their own choosing. Thus, all employees in a bargaining unit, whether union members or not, have a right to participate in the selection of the union that will function as their bargaining representative. When a question of representation arises, it is resolved through a Board supervised election, and the winner of that election is certified by the Board as the exclusive bargaining agent for all unit employees. The question here is whether the Board acted reasonably in deciding that it will not amend a certification at the request of a union reorganized by affiliation unless that affiliation has been approved by a unit-wide vote.

Two separate grounds support the rationality of the Board's position: The Board's certification expresses a Board judgment that the certified union is the one chosen by all employees to represent them; an affiliation decision involving all unit employees clearly provides a more reliable basis for the Board to conclude that the newly affiliated union is entitled to succeed to the existing certificate than does an affiliation decision in which only the union members participate. Moreover, the affiliation decision has sufficient potential for altering the relationship of all employees—not just union members—to their exclusive bargaining representative to make it appropriate to provide all employees with an opportunity to express their views on the proposed change. For

example, in the affiliation of an independent union with an international union—the change involved here—the local union loses some of its autonomy. The local must conform to the international's constitution and bylaws, which will usually involve changes not only in the jurisdiction, resources and financial obligations of the union, and the number and duties of its officers, but also may well, as here, subject decisions concerning strikes and collective bargaining agreements—matters of crucial concern to *all* bargaining unit employees—to the approval of the international union. In light of the potential effects of these changes, it is reasonable for the Board to require that all unit employees have the opportunity to express their views before the Board will consider a request to amend the existing certification. That request, which seeks the Board's imprimatur on the affiliation decision in order to bind both the employer and the non-union member employees to the union's choice, takes the affiliation decision out of the realm of purely internal union decisions.

Even if the decision to restrict the affiliation vote solely to the union membership were simply an internal union affair, the Board's refusal to consider amending a certification on the basis of such a vote would not improperly intrude into internal union matters. Certification itself is scarcely such a matter. Moreover, internal union rules that run afoul of the policies of the Act cannot be enforced. Here, the Board reasonably concluded that the union-members-only limitation was inconsistent with the Section 7 guarantees of the rights to choose a bargaining representative and to refrain from union activity.

Nor is the Board rule unnecessarily duplicative, as the court of appeals majority believed, because of the possibility that a Board-conducted election might be

required even after the unit-wide vote in favor of affiliation. If, on the particular facts before it, the Board were to conclude that a reorganization had involved such a complete change in the nature of the bargaining representative that the formerly certified union no longer existed, it would require a Board-conducted election, even though the affiliation issue had previously been submitted by the union to all the unit employees. But that situation is equivalent to the initial selection of a bargaining representative, and merits the full panoply of procedures—including the opportunity for employer campaigning—that are available in such situations.

Contrary to the opinion below, the Board's policy promotes, rather than disrupts, stable bargaining relationships, because it insures that the bargaining unit's views on the affiliation are secured *before* the proposed affiliation is consummated. If the unit disapproves of the affiliation, the independent union can retain its certification by forgoing affiliation—an option not available if the Board first makes a no-continuity finding and then directs a new election that the union loses. On the other hand, if the unit favors the proposed affiliation, the union and the Board will be able to proceed with full knowledge of those views. Even if the Board nevertheless determined that there was such a lack of continuity that a full Board-conducted election was necessary, a union whose affiliation proposal had received the informal approval of the unit employees could approach that election with confidence. In either event, the fact that the full bargaining unit has expressed its views at an early stage in the proceedings provides substantial assurance that subsequent actions will not lead to the kind of employee and employer dissatisfaction that upsets bargaining relationships.

In sum, the Board's new rule is an entirely reasonable method of assuring that its certifications in fact serve the purpose for which they are intended: the effectuation of the wishes of the majority of the entire bargaining unit. Particularly in light of the wide discretion of the Board in assuring fair procedures in the selection of bargaining representatives, the court of appeals erred in rejecting the Board's rule.

ARGUMENT

THE BOARD REASONABLY CONCLUDED THAT ALL BARGAINING UNIT EMPLOYEES, NOT JUST UNION MEMBERS, MUST BE AFFORDED AN OPPORTUNITY TO VOTE ON THE AFFILIATION OF THEIR BARGAINING REPRESENTATIVE WITH AN INTERNATIONAL UNION BEFORE THE NEWLY AFFILIATED UNION HAS A RIGHT TO CONTINUED RECOGNITION AS THE UNIT EMPLOYEES' EXCLUSIVE BARGAINING REPRESENTATIVE

A. Certification Amendment Requests Require the Board to Reconcile the Statutory Policy Favoring Union Self-Government With the Right of All Members of the Bargaining Unit to Select the Unit's Collective Bargaining Representative

Section 7 of the National Labor Relations Act, 29 U.S.C. 157, guarantees employees the right "to bargain collectively through representatives of their own choosing." Section 8(a)(5) of the Act, 29 U.S.C. 158(a)(5), implements this right by requiring an employer to bargain in good faith with the representative of its employees as defined in Section 9(a), 29 U.S.C. 159(a), which confers exclusive representative status upon the union selected by a majority of the employees in an appropriate bargaining unit. Section 9(c)(1) of the Act, 29 U.S.C. 159(c)(1),

requires the Board to "direct an election by secret ballot and * * * certify the results thereof" whenever it finds that "a question of representation" has been raised as to whether the employees desire to select a union representative or to oust or replace a previously selected representative.[6] All unit employees

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[6] Whether "a question of representation" exists depends on a number of criteria that together define the circumstances in which the Board will conduct a formal election to determine the statutory bargaining representative. As a threshold matter, a labor organization seeking initial certification or displacement of an incumbent representative must show that a substantial proportion (30%) of the bargaining unit employees want to be represented by the petitioning organization. 29 C.F.R. 101.18; *Esso Standard Oil Co.*, 124 N.L.R.B. 1383 (1959); R. Gorman, *Basic Text on Labor Law* 52 (1976) (purpose of this requirement "is to limit the drain on administrative resources and the disruption within the plant attendant upon an election campaign").

There are also such further considerations as whether an election is barred because of a prior election or certification, or an existing collective bargaining agreement, and whether the proposed bargaining unit is appropriate. See generally Office of the General Counsel, NLRB, *An Outline of Law and Procedure in Representation Cases* 59-121 (GPO 1974); R. Gorman, *supra*, at 40-59. Once a bargaining agent has been selected, the employer, the employees, and the public are assured a period of repose from the " 'excitments, strifes and animosities which characterize the hustings,' " *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 331 (1946). Thus, certification of a union as statutory bargaining representative is normally binding for one year. *Brooks* v. *NLRB*, 348 U.S. 96, 98-104 (1954). And, under the Board's contract-bar rule, an existing collective bargaining agreement generally bars an election for three years or the term of the contract, whichever is shorter. *General Cable Corp.*, 139 N.L.R.B. 1123 (1962); *NLRB* v. *Marcus Trucking Co.*, 286 F.2d 583, 592-593 (2d Cir. 1961); *Pioneer Inn Assocs.* v. *NLRB*, 578 F.2d 835, 838 (9th Cir. 1978). During these periods of enforced stability, the Board

are guaranteed the right to participate in Board-conducted elections to resolve a representation question. Well established rules and procedures insure that employees will have an opportunity to make a free choice and that the views of all competing, interested parties, including the employer, will be heard before the election is held.[7]

In addition to administering these provisions to resolve representation questions, the Board also must determine the circumstances under which a union maintains its status as statutory bargaining representative despite changes in its organization and structure, such as affiliation with an international union. *J. Ray McDermott & Co.* v. *NLRB*, 571 F.2d 850, 855-857 (5th Cir.), cert. denied, 439 U.S. 893 (1978); *Retail Store Employees Local 428* v. *NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975).[8] Unions, no less than business enterprises, frequently undergo organizational changes, such as affiliations and mergers.[9] The freedom of unions to make these changes

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will not conduct a secret ballot election, and both the employees and the employer are bound by the employees' previously designated choice.

[7] See generally 1 C. Morris, *The Developing Labor Law* 309-339 (2d ed. 1983); R. Gorman, *supra*, at 40-49. See also *Midland National Life Insurance Co.*, 263 N.L.R.B. 127, 133 (1982); *Affiliated Midwest Hospital, Inc.*, 264 N.L.R.B. 1094 (1982).

[8] This issue can arise both in representation cases where the "new" organization requests amendment of the certification issued to the "old" organization (see 29 C.F.R. 102.60(b)), and in unfair labor practice cases where the employer has refused to recognize the "new" organization.

[9] See Adams, *Labor Organization Mergers 1979-84: Adapting to Change*, 107 Monthly Lab. Rev. 21-27 (1984); *Report of AFL-CIO Committee on the Evolution of Work on the Chang-*

would be unduly impaired and "[t]he industrial stability sought by the Act would be unnecessarily disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship." *Canton Sign Co.*, 174 N.L.R.B. 906, 909 (1969), enforcement denied on other grounds, 457 F.2d 832 (6th Cir. 1972). Accord: *NLRB* v. *Katz d/b/a American Mailers*, 622 F.2d 242 (6th Cir. 1980). On the other hand, the established system of rules governing the timing and method for replacing an incumbent representative would be undermined if a completely new representative could be substituted without regard to the Board's election machinery. See *Independent Drug Store Owners of Santa Clara County*, 211 N.L.R.B. 701, 701 n.3 (1974), aff'd *sub nom. Retail Store Employees Local 423* v. *NLRB*, 528 F.2d 1225 (9th Cir. 1975). See also *Linden Lumber Division* v. *NLRB*, 419 U.S. 301 (1974) (employer normally has no obligation to recognize a union until after it has been certified as the result of a Board election).

In an effort to balance these competing considerations, the Board long has held that it will amend a certification or issue a bargaining order at the request of a union that has affiliated or undergone some other organic change only where there is reliable evidence that the change reflects the wishes of the affected employees, and where substantial continuity exists between the previously certified representative and the reorganized union. The purpose of the continuity requirement is to insure that the organizational change is not an attempt to substitute an entirely different representative in disregard of the established mechanism for making such a change.

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ing Situation of Workers and Their Unions, Daily Lab. Rep. (BNA) No. 37, at D-1, D-7 (Feb. 25, 1985).

Under this requirement, the Board holds that organizational changes that are substantial enough to create an entirely different entity raise a statutory question concerning representation, which can only be determined through the Board's formal election procedures.[10] The reasonableness of the continuity requirement was not questioned by the respondent Union or the court below and is not at issue here.

This case involves the related aspect of the Board's policy, as reflected in its *Amoco IV* rule: the Board's conclusion that even where the change is not sufficient

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[10] Whether the changes caused by affiliation are relatively minor and therefore do not disrupt continuity between the old and new organizations, or are significant and result in a new entity that can be recognized only through established procedures for certifying a new representative, is a question of fact for the Board. In making this determination the Board has considered such factors as: whether the union continues to administer the contracts to which it is a party; whether it has retained its old officers; and whether it has maintained its autonomy regarding such matters as contract negotiations, strikes, and grievances. See, *e.g.*, *J. Ray McDermott & Co.* v. *NLRB*, 571 F.2d 850, 855-857 (5th Cir. 1978); *NLRB* v. *Pearl Bookbinding Co.*, 517 F.2d 1108, 1111-1112 (1st Cir. 1975); *NLRB* v. *Commercial Letter, Inc.*, 496 F.2d 35, 39-40 (8th Cir. 1974); *Retail Store Employees Local 428* v. *NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975). The Board has in general found that affiliations do not destroy continuity of representation. See, *e.g.*, *Insulfab Plastics, Inc.*, 274 N.L.R.B. No. 126, 119 L.R.R.M. 1086 (Mar. 11, 1985); *Hamilton Tool Co.*, 190 N.L.R.B. 571 (1971); *North Electric Co.*, 165 N.L.R.B. 942 (1967); *East Ohio Gas Co.*, 140 N.L.R.B. 1269, 1270 (1963); and court cases cited above. But cf. *American Bridge Div., U.S. Steel Corp.* v. *NLRB*, 189 N.L.R.B. 119 (1971), enforcement denied, 457 F.2d 660, 663-664 (3d Cir. 1972) (Board found continuity, court disagreed); *Sun Oil Co.* v. *NLRB*, 228 N.L.R.B. 1072 (1977), enforcement denied, 576 F.2d 553, 556-558 (3d Cir. 1978) (same).

to destroy continuity and thus raise a question concerning representation, reorganization has sufficient potential for affecting the relations between nonunion unit members and their exclusive bargaining representative to require a showing that all unit members agree to the change. Accordingly, the Board will not amend a certification or issue a bargaining order at the request of the reorganized union unless there is reliable evidence that the affected employees have consented to the change.

B. The Board's *Amoco IV* Rule Constitutes a Reasonable Exercise of the Board's Authority Under the Act

1. The Board has broad discretion to establish and administer the procedures and conditions for certifying a labor organization as the statutory bargaining representation. *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969); *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *NLRB* v. *Waterman Steamship Corp.*, 309 U.S. 206, 226 (1940). This discretion extends to policing the certification the Board issues,[11] and thus to determining the conditions under which the certification will be amended to reflect a union organizational change, and, accordingly, the circumstances under which an employer will be required to bargain with a union that has undergone an organizational change. The Board's interest in the organizational change situation arises from the basic fact that the newly affiliated, or otherwise

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[11] See, *e.g.*, *NLRB* v. *Detective Intelligence Service, Inc.*, 448 F.2d 1022, 1025 (9th Cir. 1971) (clarifying scope of original unit certification); *Hughes Tool Co.*, 147 N.L.R.B. 1573 (1964) (decertifying union for executing and administering racially discriminatory collective bargaining agreement); cf. *Bell & Howell Co.* v. *NLRB*, 598 F.2d 136, 145-146 (D.C. Cir. 1979).

altered, organization seeks the Board's "imprimatur" on the new arrangement. *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a). Thus, while a union affiliation may be considered merely an internal matter to the extent that it pertains only to the ordering of the union's internal affairs, the union takes the matter out of that sphere when it seeks the aid of government to enforce that choice on those who must by law be represented by it or deal with it for purposes of collective bargaining. As Judge Kennedy recognized in dissenting from the denial of rehearing en banc below, the Board reasonably viewed "the question to be not whether the union could change its affiliation, but whether it could change its affiliation *and* remain the bargaining agent of all the employees in the unit" (Pet. App. 62a; emphasis in original).[12]

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[12] A newly affiliated or otherwise reorganized union seeks to succeed to the status of statutory representative enjoyed by its predecessor organization, not for any internal union reason, but to enjoy the full panoply of rights and protections that flow from that status. As statutory representative, the union is the exclusive representative of the employees in the bargaining unit with respect to their "wages, hours, and other terms and conditions of employment." 29 U.S.C. 158(d); *Medo Photo Supply Corp.* v. *NLRB*, 321 U.S. 678, 683-684 (1944). This authority extends to all bargaining unit employees, whether or not they are members of the union, and "extinguishes the individual employee's power to order his own relations with his employer. * * * [O]nly the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances." *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967) (footnote omitted). Accord: *Emporium Capwell Co.* v. *Western Addition Community Org.*, 420 U.S. 50, 63 (1975).

By succeeding to the certification issued to its predecessor, the successor organization also retains the protection against competing organizations embodied in the certification and con-

The Board has always required reliable evidence of employee consent before giving a newly affiliated or otherwise reorganized union governmental sanction to continue as the employees' statutory representative. Initially, the Board considered approval by bargaining unit employees as one factor in determining whether there was continuity between the previously certified representative and the newly reorganized union. See *Harris-Woodson Co.*, 85 N.L.R.B. 1215, 1216 & n.3 (1949), enforced, 179 F.2d 720, 722 (4th Cir. 1950); *Santa Clara Lemon Ass'n*, 112 N.L.R.B. 93, 94 n.3 (1955), aff'd *sub. nom Carpenteria Lemon Ass'n* v. *NLRB*, 240 F.2d 554 (9th Cir. 1957); *Emery Industries, Inc.*, 148 N.L.R.B. 51, 54 (1964); cf. *Gulf Oil Corp.*, 135 N.L.R.B. 184, 185 n.6 (1962) (Chairman McCulloch concurring because of "doubt as to whether [the change] actually reflect[s] the desire of a majority of employees in the represented unit").

Employee consent took on the status of an independent requirement in a series of cases in which the Board refused to amend the incumbent's certification where the affected employees had not been allowed to vote on the affiliation or merger at issue. *Yale Mfg. Co.*, 157 N.L.R.B. 597 (1966); *M.A. Norden Co.*, 159 N.L.R.B. 1730, 1732 (1966) ("no evidence that the employees had knowledge of, or have consented to, the proposed change"); *Rinker Materials Corp.*, 162 N.L.R.B. 1688, 1689 (1967) ("unit

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tract bar rules (see n.6, *supra*) and enjoys other significant statutory protections. See 29 U.S.C. 158(b)(4)(B) (certified representative may engage in certain secondary activity); 29 U.S.C. 158(b)(7) (certified representative may engage in recognitional picketing); 29 U.S.C. 158(b)(4)(C) (certified union protected against recognitional picketing by a rival union).

employees did not participate"). The independent nature of the requirement became explicit in *North Electric Co.*, 165 N.L.R.B. 942, 943 (1967), where the Board amended the incumbent's certification because there was continuity between the incumbent and the post-affiliation labor organization "*and it also* appears that voluntary and regular procedures under appropriate safeguards have been followed to determine the employees' wishes on the question of affiliation" (emphasis supplied).

As the Board explained in *North Electric Co.*, 165 N.L.R.B. at 942, the purpose of requiring employee approval of the change is to insure that the status of statutory representative is not conferred "where the possibility of a question concerning representation remains open because the change of affiliation took place under circumstances that do not indicate that the change reflected a majority view." [13] Thus, contrary to the court below, the purpose of what have come to be called "due process requirements" [14] is not merely "to protect union members' rights" (Pet. App. 21a), but to insure that union organizational changes reflect the desires of all the employees in the bargaining unit affected by the change. See *Newspapers, Inc.*, 210 N.L.R.B. 8, 10 n.13 (1974), enforced, 515 F.2d 334 (5th Cir. 1975) ("the Board's primary concern [is] that the unit employees have

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[13] The Board's rules provide that petitions to amend a certification are appropriate only "in the absence of a question concerning representation." 29 C.F.R. 102.60(b).

[14] The Board referred to the requirement that the change be made under democratic procedures that afforded the affected employees an opportunity to express their views as "minimum standards of due process" in *Hamilton Tool Co.*, 190 N.L.R.B. 571, 573 (1971); see also *North Electric Co.*, 165 N.L.R.B. at 944 (Members Jenkins and Zargoria, dissenting).

had an opportunity to pass upon the transfer of representation").

In *North Electric*, however, the Board was divided on the question whether an internal union referendum limited to union members is a sufficiently reliable indication of the sentiments of all the employees in the bargaining unit to justify the Board in amending a certification at the request of a union that has undergone an organizational change. The *North Electric* majority held that such a referendum *was* sufficient, provided that nonmembers were free to join the union and thus participate in the election and the debate that preceded it. 165 N.L.R.B. at 942-943. Members Jenkins and Zagoria dissented, asserting that "minimal standards of due process" required that *all* bargaining unit employees be afforded the opportunity to vote directly on "any change in designation of the bargaining representative." 165 N.L.R.B. at 944. The Board subsequently adopted the *North Electric* minority view in *Jasper Seating Co.*, 231 N.L.R.B. 1025, 1026 (1977),[15] but returned to the *North Electric* majority view in *Amoco III*, 239 N.L.R.B. at 1195 n.3. The Board is now persuaded that the *North Electric* minority view is more consonant with, and better effectuates the policies of, the Act, and it has again adopted it as the position of the Board. *Amoco IV*, 262 N.L.R.B. 1240 (1982) (Pet. App. 49a-58a).

2. The *Amoco IV* requirement that union affiliations be approved under democratic procedures which afford all unit members—union as well as nonunion—the opportunity to vote on the change rests on the

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[15] *Jasper Seating* was the governing precedent when the FIEA, in early 1978, conducted its affiliation vote in this case. Thus, under Board standards in effect at the time, the vote provided an insufficient basis for an amended certification.

Board's judgment that union affiliations affect not just union members but all bargaining unit employees, and that excluding nonmembers from the voting is inconsistent with the fundamental guarantees of the Act. *Amoco IV*, 262 N.L.R.B. at 1241; *1820 Central Park Ave. Restaurant Corp.*, 271 N.L.R.B. No. 68, 116 L.R.R.M. 1393 (July 25, 1984).[16] The Board's judgment on each point is reasonable and furthers the underlying policies of the Act.

Even where an affiliation does not result in sufficient changes in a union to create a completely new entity, such an organizational change can still significantly affect the union's representation of the bargaining unit. Thus, affiliation of an independent union with an international union requires the former to conform to the latter's constitution and any additional requirements imposed by the affiliation agreement. As here (see n.2, *supra*), affiliation can change the union's jurisdiction, alter its bylaws and constitution, change its officers and their duties, alter its financial obligations and resources, require international union approval for its strikes and collective bargaining agreements, provide for international union control over its dues, and potentially subject the new local union to trusteeship and other international union controls. These changes affect not only the internal relationship between the independent union and its members, but also the relationship be-

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[16] The Board also applies its *Amoco IV* rule where two local unions of the same international union merge (*F.W. Woolworth Co.*, 268 N.L.R.B. 805 (1984), petition for review pending, *United Food & Commercial Workers Local 568* v. *NLRB*, No. 84-1243 (D.C. Cir.)), or where a local union splits into two separate unions (*1820 Central Park Ave. Restaurant Corp.*, 271 N.L.R.B. No. 68, 116 L.R.R.M. 1393 (July 25, 1984)).

tween the independent union and all of the employees it represents in its capacity as statutory bargaining representative.

An affiliation thus necessarily has the potential for changing the relationship between the statutory representative and the represented employees. Moreover, the effect of the Board's amendment of a certification is to cloak the affiliated union with exclusive authority to represent the entire bargaining unit (see n.12, *supra*). It was accordingly reasonable for the Board to conclude that consistency with the Act's policy of affording employees full freedom to select their representative [17] requires that all unit employees have the right to vote on affiliations under procedures that at least minimally approximate those used when employees make their initial choice of a representative (pp. 12-14, *supra*). As the Board stated in *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a), "it is inconsistent to permit all unit employees to vote in a representation election, but when the question is one of affiliation with another union, to permit only union members the right to vote." [18]

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[17] See National Labor Relations Act § 1, 29 U.S.C. 151; *Hill* v. *Florida*, 325 U.S. 538, 541 (1945); *International Ladies' Garment Workers Union, AFL-CIO* v. *NLRB*, 366 U.S. 731, 737 (1961).

[18] The Board distinguished affiliation votes from strike votes, contract ratification votes and the selection of union officers —on which the union need not accord a voice to unit employees who are not union members. See *Brown* v. *Hotel & Restaurant Employees Local 54*, No. 83-498 (July 2, 1984), slip op. 2 n.3 (White, J., dissenting). The Board explained that, unlike affiliation votes, the other matters do not call for the Board to put its imprimatur on the union's decision as it does when it amends the designation of the employees' bargaining representative. *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a).

The Board also reasonably concluded that the option that *Amoco III* afforded nonunion members of the unit—the opportunity to join the union and thus to participate in the election—"shut[s] one's eyes to Section 7 of the Act [which] clearly gives employees the choice of participating in union activities or * * * refrain[ing] from engaging in those activities" (Pet. App. 53a-54a). See *Pattern Makers League* v. *NLRB*, No. 83-1894 (June 27, 1985) slip op. 9-12. The *Amoco III* option required non-union members of the unit to forgo their Section 7 right to refrain from joining the union in order to vote on the affiliation. The *Amoco IV* requirement that all unit members—union as well as non-union—be permitted to vote on a union affiliation, on the other hand, affords non-union members of the unit an opportunity to express their views on the identity of their bargaining representative without at the same time requiring them to relinquish their Section 7 right to refrain from assuming the obligations of full union membership.[19]

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[19] At the time of the affiliation at issue here, only 2624 of the 4790 employees in the affected bargaining unit were FIEA members. The almost 2200 bargaining unit employees who had exercised their Section 7 right to refrain from joining the FIEA were never given any opportunity to vote on the affiliation and its potential effect on their statutory representative and their representational rights. Thus, it is clear that the number of employees excluded was sufficient to have affected the outcome of the actual vote (1206 for affiliation, 774 against). However, the *Amoco IV* rule requires a unit-wide vote even where the number of nonmembers excluded is mathematically insufficient to have altered the result (Pet. App. 54a n.12).

C. The *Amoco IV* Rule Does Not Impermissibly Interfere With Internal Union Affairs, Is Not Unreasonably Duplicative, and Preserves Rather Than Disrupts Stable Bargaining Relationships

1. The Board's *Amoco IV* rule requires a vote of all bargaining unit employees as a precondition to enlisting the Board's power to impose the new arrangement on others. It does not preclude an independent union from limiting to its own members the determination of whether affiliation would be in the union's interest, so that unit-wide approval should be sought. Indeed, some union affiliations have been accomplished by such a two-tiered procedure. See, *e.g.*, *Ocean Systems, Inc.*, 223 N.L.R.B. 857, 857-858 (1976), enforced *sub nom. J. Ray McDermott & Co.* v. *NLRB*, 517 F.2d 850 (5th Cir. 1978), cert. denied, 439 U.S. 893 (1978); *Safway Steel Scaffolds Co.*, 173 N.L.R.B. 311 (1968). Other unions have afforded nonmembers the opportunity to vote in their internal affiliation or merger elections. See, *e.g.*, *Williamson Co.*, 244 N.L.R.B. 953, 953-954 (1979); *New Orleans Public Service, Inc.*, 237 N.L.R.B. 919, 920 n.5 (1978); *Newspapers, Inc.*, 210 N.L.R.B. 8, 9 n.3 (1974), enforced, 515 F.2d 334 (5th Cir. 1975).[20] Moreover, the election required by the *Amoco IV* rule does not place any onerous or costly burdens on the union. No elaborate procedures are required. The Board simply requires a vote "conducted under democratic procedures with fair notice to all concerned employees." *NLRB* v. *Newspapers, Inc.*, 515 F.2d

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[20] Of course, where every member of the bargaining unit is a union member, no special procedure is necessary. See, for example, *Insulfab Plastics, Inc.*, 274 N.L.R.B. No. 126, 119 L.R.R.M. 1086 (Mar. 11, 1985); *Gasland, Inc.*, 239 N.L.R.B. 611 (1978); *Quemetco, Inc.*, 226 N.L.R.B. 1398 (1976).

334, 339 (5th Cir. 1975); *NLRB* v. *Commercial Letter, Inc.*, 496 F.2d 35, 42 (8th Cir. 1974). And see *St. Vincent Hospital* v. *NLRB*, 621 F.2d 1054, 1059 (10th Cir. 1980).[21]

2. The Board's *Amoco IV* rule, insofar as it "mandates that a continuity determination may not be conducted until after a unit-wide vote is taken," does not, as the court below asserted, "put[] the cart before the horse" (Pet. App. 16a). That assertion is based on the premise that a change in the union's structure or organization is an internal union matter, unless it is substantial enough to create a new entity and thus raise a question concerning representation sufficient to invoke the Board's election machinery. As we have shown (pp. 22-23, *supra*), even where the change is not substantial enough to create a new entity, a union organizational change—specifically, a change in affiliation—has a sufficient potential for affecting the union's representation of the bargaining unit so that all of the employees in the unit have a legitimate interest in voting on the change.

Moreover, even if the Board's requirement of a unit-wide vote before placing its imprimatur upon a union affiliation were deemed to intrude upon what would otherwise be an internal union affair, that

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[21] As these cases recognize and the Board stated in *Amoco IV* (Pet. App. 52a), while it is not necessary that such elections "meet the standards the Board has enunciated for its own election proceedings, there are certain due process requirements which must be met in order to have a valid affiliation election." As a general matter, procedures that provide "adequate notice, time for reflection, discussion, and opportunity to vote [and] * * * reasonable efforts * * * to preserve the secrecy of the ballot" are sufficient. *Williamson Co.*, 244 N.L.R.B. 953, 955 (1979). See also *New Orleans Public Service, Inc.*, 237 N.L.R.B. 919, 920 (1978).

would not justify invalidation of the Board's requirement. This Court has recognized that union rules cannot be enforced where they run afoul of the policies of the Act. See *Pattern Makers' League* v. *NLRB*, *supra* (union rule barring resignations during a strike is contrary to the policy of voluntary unionism embodied in the Act); *NLRB* v. *Industrial Union of Marine Shipbuilding Workers*, 391 U.S. 418 (1968) (union rule requiring exhaustion of all remedies within the union before resort to any outside tribunal violates Section 8(b)(1)(A) of the Act, 29 U.S.C. 158(b)(1)(A)); see also *Scofield* v. *NLRB*, 394 U.S. 423, 430 (1969) (union rule is invalid under Section 8(b)(1)(A) if it "impairs [a] policy Congress has imbedded in the labor laws". As shown (p. 24, *supra*), the Board reasonably concluded that acceptance of a union procedure restricting affiliation votes to union members as a basis for amending the Board's certification of the exclusive representative for a bargaining unit would thwart the national labor policy favoring employee free choice of a bargaining representative.

3. Nor, contrary to the view of the court below, is the Board's new rule "unreasonably duplicative" (Pet. App. 22a). As the court notes, it is possible that, even after a majority of the unit employees have approved the affiliation in a union-conducted vote, "the Board would nonetheless call a formal unit-wide representation election if the Board found that the post-affiliation union was substantially different from the pre-affiliation union" (*ibid.*).[22] But where there

[22] Because the Union did not hold a vote open to all employees, the Board did not reach the issue of whether the affiliation here in fact did result in a lack of continuity. See p. 6, *supra*.

is a lack of continuity, a Board-conducted election is not simply another method of determining whether a majority of the unit employees want to be represented by the new entity. Rather, where the new entity is substantially different from the old entity, the old bargaining relationship has been so altered that the Board is justified in treating the situation as comparable to an initial recognition situation wherein the employer—even though it may have no reason for doubting the union's majority status—is entitled to have the representation question determined in a Board-conducted election, in which it will have an opportunity to express its views to the employees. See *Linden Lumber Division* v. *NLRB*, 419 U.S. at 305-310.

4. Finally, the court below is incorrect in its claim that the *Amoco IV* rule runs counter to the policy of promoting stable bargaining relationships (Pet. App. 19a).

To the contrary, the requirement that all unit employees have an opportunity to participate in the vote on affiliation minimizes the potential for disruption. Since employee views are obtained before the affiliation occurs, the union can base its decision on those views: if the vote is against affiliation, it can retain its independent status and its certification, while if the vote is in favor of affiliation, it can proceed with confidence that, even if the Board should later decide that a lack of continuity requires a Board-supervised election, it is likely to prevail in that election. In contrast, under the procedure required by the court, the union's affiliation may result in decertification, and the loss of the privileges of certified status, if the Board determines—after the affiliation has occurred—that lack of continuity has raised a ques-

tion of representation requiring a Board-run election, and the union loses that election.

In any event, it is the union's decision to affiliate that alters the established relationship among the certified representative, the employees, and the employer; and it is the purpose of the *Amoco IV* rule to insure that the post-affiliation relationship continues to serve the policy of stability. The rule does so by insuring that the post-affiliation organization continues to enjoy the support of the employees it represents. See *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270, 279-280 (1956). A different procedure—one that either excludes or limits the participation of bargaining unit employees—runs a substantial risk that the post-affiliation organization does not reflect the wishes of the employees it purports to represent. In avoiding this risk, the Board's new "rule will promote stability more effectively than did its former position" (Pet. App. 26a (Wright, J., dissenting)). Moreover, if the union adheres to the *Amoco IV* rule and obtains the approval of the unit employees for its affiliation, the Board will amend its certification (absent a finding of lack of continuity), just as it would have under the old rule. A disruption of the bargaining relationship would occur only if the newly affiliated union attempted to proceed as a bargaining representative notwithstanding an unwillingness to adhere to the Board's procedures or an inability to obtain majority support in the bargaining unit.

D. The Court Below Departed From Established Principles of Judicial Review in Failing To Sustain the Board's *Amoco IV* Rule

This Court has recognized that "Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees." *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946). Moreover, where, as here, "[t]he ultimate problem is the balancing of the conflicting legitimate interests[,] [t]he function of striking that balance to effectuate national labor policy is * * * a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *NLRB* v. *Truck Drivers Union No. 4*, 353 U.S. 87, 96 (1957). Accordingly, the function of the reviewing court in this case was merely to determine whether the Board's *Amoco IV* rule was a reasonable implementation of the Act's policies, and if it was, the court was required to uphold the rule even though a different rule might have been equally reasonable. Cf. *Pattern Makers' League* v. *NLRB*, slip op. 2 (White, J., concurring). As the Fifth Circuit stated in upholding the *Amoco IV* rule, "the only question presented to the courts in an election review is whether the Board has reasonably exercised its discretion." *Local No. 4-14, Oil Workers Int'l Union* v. *NLRB*, 721 F.2d at 152. Had the court below adhered to this limited reviewing function, it would have sustained the Board's action, for, as shown (pp. 17-24, *supra*), the *Amoco IV* rule is a reasonable exercise of the Board's discretion "to insure the fair and free choice of bargaining representatives by employees" (*NLRB* v. *A.J. Tower Co.*, 324 U.S. at 330), and strikes a reasonable balance

among "conflicting legitimate interests" (*NLRB* v. *Truck Drivers Union No. 4*, 353 U.S. at 96).[23]

Nor is the Board's new rule entitled to less deference simply because it constitutes a change from previous policy. As this Court observed in *NLRB* v. *Action Automotive, Inc.*, No. 83-1416 (Feb. 19, 1985), slip op. 4 n.4: "[t]he Board's policy is not undermined by the fact that it has modified and re-

---

[23] Amicus Curiae Chamber of Commerce of the United States (Chamber) contends (Br. at 14-15) that "the issuance of amended certifications [is] a discretionary administrative grant under the N.L.R.A. * * * [and] the Board's exercise of its Section 9 authority, in *toto*, is not subject to judicial review." While a Board decision in a representation proceeding is not directly reviewable in the court of appeals under Section 10(e) or (f) of the Act, 29 U.S.C. 160(e) or (f), such action is reviewable where it forms the basis for an unfair labor practice order that is before the court for review or enforcement. *AFL* v. *NLRB*, 308 U.S. 401 (1940). In this case, the Board's initial decision to amend the certification, which the Bank refused to honor, led to an unfair labor practice proceeding in which the Board issued a bargaining order. That unfair labor practice order was subject to review in the court of appeals, along with the underlying certification on which it was based. After remand by the court, the Board not only revoked the amended certification, but concluded that the Bank had not violated Section 8(a)(5) of the Act and dismissed the unfair labor practice complaint. The dismissal of the complaint by the Board was a final order reviewable in the court of appeals and the propriety of that order was dependent upon the validity of the Board's action in revoking the amended certification. In these particular circumstances, the court of appeals had jurisdiction to review the Board's revocation of the amended certification. *General Drivers, Local 886* v. *NLRB*, 179 F.2d 492 (10th Cir. 1950), cited by the Chamber (Br. at 15), is inapposite. That case involved an attempt to review the General Counsel's refusal to issue an unfair labor practice complaint. The General Counsel's refusal to issue a complaint is wholly unreviewable. See *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967).

fined its position; an agency's day-to-day experience with problems is bound to lead to adjustments." In short, "[a]n administrative agency is not disqualified from changing its mind" (*NLRB* v. *Local 103, International Association of Iron Workers*, 434 U.S. 335, 351 (1978)). When it does so, it is not the task of the reviewing court to construe the statute de novo; instead the court must decide whether "the Board has reached a fair and reasonable balance upon a question within its special competence," and whether, in reaching "its newly arrived at construction" of the Act, "the Board has adequately explicated the basis of its interpretation." *NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 267 (1975). Accord: *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 492 (1947). We submit that the Board has done so here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, provide in pertinent part as follows:

§ 1, 29 U.S.C. 151.

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

§ 7, 29 U.S.C. 157.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations [and] to bargain collectively through representatives of their own choosing, * * * and shall also have the right to refrain from any or all of such activities.

§ 8(a), 29 U.S.C. 158(a).

> It shall be an unfair labor practice of an employer—
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

§ 9, 29 U.S.C. 159.

(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question

of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. * * * If the Board finds upon the record of such hearing that such question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

The relevant provisions of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. 101-103, provide in pertinent part as follows:

§ 102.60(b), 29 C.F.R. 102.60(b).

Petition for clarification of bargaining unit or petition for amendment of certification under section § 9(b) of the Act; who may file; where to file; withdrawal. A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer.

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IN THE

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OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD,
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Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR RESPONDENT FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182

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Respondents.

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BRIEF FOR RESPONDENT FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182

The citations to the opinions below, the basis on which this Court's jurisdiction is invoked and the statutes and regulations involved are set out at pp. 2, 1a-3a of the brief of the National Labor Relations Board ("NLRB Br.").

STATEMENT OF THE CASE

A. The Facts

In 1970, the Firstbank Independent Employees Association ("FIEA" or the "Union") was certified as the exclusive bargaining representative of the employees of the Seattle-First National Bank ("Seattle-First" or the "Employer") working at 170 locations throughout the State of Washington, after a representation election conducted by the National Labor Relations Board ("NLRB" or the "Board"). Pet.App. 29a; Jt.App. 45.[1]

The FIEA Constitution was framed to provide the flexibility to meet changing circumstances and the changing needs and desires of its membership. Amendments to any portion of the Constitution could be "proposed by majority vote of the Executive Council or a Unit" and ratified by the membership. FIEA Constitution, Art. XVIII, Jt.App. 66. The Constitution also provided, in conformity with federal law, for periodic election of union officers, *id.* Art. V(D) and (E), Jt.App. 56-58, and for dues to be established from time to time "by the affirmative vote of two-thirds of the Executive Council and ratified by a majority of the membership . . . ," *id.* Art. X, Jt.App. 61. And while initially only Seattle-First employees (with certain exceptions) were eligible for membership in the Union, "[e]xpansion to include other labor organizations or employees of other banks [could] be accomplished by the affirmative vote of two-thirds of the Executive Council and ratification of whatever amendments to this Constitution may be required." *Id.* Art. IX, Jt.App. 61.

Of the most immediate significance in this case, the FIEA Constitution expressly provided for "affiliation with other labor organizations." *Id.* Art. VIII, Jt.App. 61. An

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[1] "Pet.App." refers to the Appendix to the National Labor Relations Board's Petition For A Writ of Certiorari in No. 84-1493. "Jt.App." refers to the Joint Appendix.

affiliation could take place if recommended by the Union's Executive Council and ratified by a membership vote in which at least 60% of the members voted and a majority favored affiliation. Jt. App. 8.[2]

As the time for the 1977 renegotiation of the Seattle First-FIEA collective bargaining agreement drew near, the Union's Executive Council was concerned, based upon what the Council knew of the Employer's bargaining position, that there might be "rather protracted contract negotiations" requiring "extensive legal assistance . . . [which FIEA was] not in a financial position to sustain." Jt. App. 8. The Executive Council directed the Union's bargaining committee, in conjunction with carrying on the contract negotiations, to "constitute itself a search committee to examine [other] unions for the possibility of affiliation." *Id.* In performing this assignment, the committee "concentrated on . . . looking to see that the structure [of a potential affiliation partner] would be compatible" [with FIEA]; in determining compatibility the committee assigned the "resulting degree of autonomy" the affiliated FIEA would enjoy "a high priority. . . ." Jt.App. 9, 73, 76.

After discussions with several national labor organizations, the Executive Council determined that the Retail Clerks International Union (now the United Food and Commercial Workers ("UFCW")) best met FIEA's criteria and FIEA concluded an affiliation agreement with UFCW. Jt.App. 8-9. The first NLRB decision in this case describes what then ensued:

> The affiliation agreement was unanimously approved by the executive council of FIEA. A notice was mailed to all unit representatives (the equivalent of shop stewards) informing them of meetings to be held throughout the State on January 6, 7, and 8,

---

[2] Until 1975, the FIEA Constitution required that to approve an affiliation, two-thirds of the members must vote, and two-thirds of those voting must approve the affiliation. Jt. App. 7.

> 1978. At these meetings the unit representatives were informed of the terms of affiliation, the election procedure, and the standards for voter eligibility. In order to vote an individual had to be either a current member of FIEA or join by January 19 and pay 1 month's dues of $4. The unit representatives were instructed to contact all unit employees and inform them of the pending affiliation vote and specifically to contact nonmembers and explain to them the eligibility standards. Concurrently a letter was sent to all unit employees informing them of the pending election and the eligibility requirements. After this initial meeting other meetings were held at all work locations. These meetings were attended by officials of both FIEA and Clerks and were open to all unit employees. On or about January 17 another letter was sent to all unit employees reiterating the eligibility standards.
>
> On January 20 a notice was sent to all FIEA members informing them that a secret-ballot, affiliation election would be conducted by the Washington State Public Employment Relations Commission (PERC). . . .
>
> PERC mailed the ballots on February 4 to 2,624 members; there were approximately 4,800 employees in the unit. The results were 1,206 votes for affiliation and 774 against. FIEA applied for, and on April 1 was granted, a charter by the Clerks [UFCW]. [Pet. App. 28a-29a.]

After the affiliation vote, FIEA continued to operate out of the same offices, pursuant to the same organizational structure, and, except for normal turnover, with the same officers and unit representatives. Jt.App. 14-16, 46-47. As before, Seattle-First employees constituted FIEA's membership. Jt.App. 46. As a UFCW local union, FIEA, and its members, remained in charge of its own collective bargaining negotiations and of such decisions as whether to go on strike; indeed FIEA continued to be represented by the same bargaining committee

before and after the affiliation. The one difference affiliation has made is to enable FIEA to call on the UFCW for financial and staff assistance which FIEA promptly proceeded to do. Jt.App. 26, 30-31, 47, 79.[3]

From the outset, the Employer opposed and actively campaigned against the affiliation effort. Jt.App. 90-91. In so doing, the Employer insisted that nonmembers of the Union should vote on the question of whether FIEA should affiliate with the UFCW. *Id.*

B. The Proceedings Below

On June 19, 1978, FIEA filed a petition with the NLRB seeking to amend its Board certification to state its new name—"Financial Institution Employees of America, Local 1182, chartered by the Retail Clerks International Union, AFL-CIO." Pet. App. 27a. The NLRB ruled that the affiliated Union is a continuation of the previously-certified representative, stating that the affiliation "does not create a new organization, nor does it result in the dissolution of an already existing organization. . . . ," and on that basis made the certification amendment. Pet. App. 30a.

Despite the Board's ruling, Seattle-First refused to bargain with FIEA. On the Union's resulting unfair labor practice charges, the Board found that the Employer had "refuse[d] to bargain collectively with the representatives of his employees" in violation of § 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(a)(5) ("NLRA" or the "Act"). Pet.App. 34a-42a.[4] Seattle First petitioned for review in the United States Court of Appeals for the Ninth Circuit.

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[3] The UFCW International President must approve a strike to make the strikers eligible for international union strike benefits, but strikes by UFCW local unions can and do occur without such authorization. Jt.App. 30, 168-70. Conversely, "the International executive board cannot force a local union to go on strike." Jt.App. 31.

[4] The Employer sought an unfair labor practice case hearing to introduce new evidence not presented at the certification amend-

While that petition was pending the Board requested a remand of this case for reconsideration. More than two years after the remand, the Board, in the companion case of *Amoco Production Co.*, 262 NLRB 1240 (1982) (*"Amoco IV"*), reversed, by a 3-2 vote, its longstanding position that employees in a bargaining unit represented by a union who are not union members have no more right to vote on affiliation decisions than nonmembers have to participate in the decision of any other union governance question.[5]

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ment hearing. That evidence included petitions, dated April and May 1979, from about 350 employees—a small minority of the nonmembers of the Union—stating that they wished to vote on the affiliation question. Pet.App. 36a. The Board refused to grant the requested hearing because "the new evidence would have no effect on the validity of the affiliation vote." *Id.*

[5] As we show pp. 24-26 *infra*, for years the Board took the position that questions concerning a union's procedures for effecting an affiliation are of no concern to the Board. Thereafter, the Board concluded that the union is required to hold a vote among its members on an affiliation, but that nonmembers are not entitled to vote in that election. That latter rule was first announced in *North Electric Co.*, 165 NLRB 942 (1967), and was adhered to for over a decade. *See, e.g., Hamilton Tool*, 190 NLRB 571 (1971); *Bear Archery*, 223 NLRB 1169 (1976), *enf'd denied*, 587 F.2d *812* (6th Cir. 1977).

In *Jasper Seating Co.*, 231 NLRB 1025 (1977), the Board, in a 3-2 opinion (Members Murphy and Fanning dissenting), for the first time suggested that nonmembers are entitled to vote in affiliation elections, although even that decision was equivocal in that there was no one opinion for the majority, and Member Penello's decisive concurring opinion was "based upon the application of principles different from those applied by my colleagues," *id.* at 1026. *See Providence Medical Center*, 243 NLRB 714, 723 (1979). In the wake of *Jasper Seating*, the Board secured a remand of petitions for review that were pending from its two decisions in *Amoco Production Company*, 220 NLRB 861 (1975) and 233 NLRB 158 (1977) (*Amoco I* and *"Amoco II"*), sustaining an affiliation election in which nonmembers had not voted, and ordering the employer to bargain with the affiliated union (*Amoco I*) and to provide reimbursement to the union of a sum equal to the dues the employer,

The Board applied its newly-announced *Amoco IV* rule to this case as follows:

> The [Employer] argues, *inter alia*, that the affiliation election is invalid because only members of FIEA were permitted to vote. In accordance with our recent decision in *Amoco Production Company*, this contention is correct. . . . Accordingly, the election did not meet minimal due-process standards and the affiliation was improper. The [Employer], therefore, did not violate Section 8(a)(5) when it refused to bargain with Financial Institution Employees of America, Local No. 1182, chartered by United Food and Commercial Workers International Union, AFL-CIO. [Pet. App. 47a]

On this basis the Board vacated the amended certification and dismissed the refusal to bargain complaint. The Board, however, did not reverse, or so much as question, its earlier conclusion that the FIEA affiliation with the UFCW did not work a change in the identity of the certified representative.

This case then returned on review to the Ninth Circuit which concluded that "[t]he Board's new rule is . . . neither consistent with the NLRA's purposes nor

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in violation of the collective bargaining agreement, had failed to withhold from employees' wages (*Amoco II*).

On remand, the Board in *Amoco III*, 239 NLRB 1195 (1979), reaffirmed its rule that nonmembers are not entitled to vote in affiliation elections; the Board stated that "[t]o the extent *Jasper* [*Seating*] may be inconsistent with our decision here, it is overruled," 239 NLRB at 1195 n.3. *Amoco III* was in turn vacated by the Fifth Circuit for clarification of the determination that the affiliated union there was a continuation of the preexisting bargaining representative; that court did not reach the issue of nonmember voting. *Amoco Production Co. v. NLRB*, 612 F.2d 107 (5th Cir. 1980). In *Amoco IV*, the majority (Chairman Van de Water, Members Hunter and Jenkins) used the occasion of the remand to overrule the holding of *Amoco III* with respect to nonmember voting and to adopt the rule at issue here.

rational," Pet. App. 23a, and vacated the Board's decision. That court explained:

> The Board's previously-followed . . . procedures adequately protected the critical rights of employees to be represented by a union selected by a majority of employees in the unit while also protecting union members' rights to run their internal affairs free from unnecessary outside intervention. The procedure allowed the Board to require a post-affiliation representation election on a case-by-case basis if a "question concerning representation" arose. Where no question arose because the affiliation resulted in an insubstantial change in the certified bargaining representative, the Board recognized the change as a purely internal matter and amended the certification of the newly-affiliated union without a unit-wide election. It is irrational to discard an effective procedure that neither (1) unnecessarily interferes in internal union affairs, (2) unnecessarily destabilizes the bargaining representative, nor (3) unnecessarily discourages the legitimate decision of independent unions to affiliate, in favor of a new procedure that presents all of those risks. [Pet. App. 20a]

SUMMARY OF ARGUMENT

I. Decisions of the National Labor Relations Board are "judicially reviewable for consistency with the [governing] Act, and for rationality." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 501 (1978). In this case, particular care is in order in assuring that the Board has met its decisionmaking responsibilities for two reasons. First, this is a situation in which the agency has chosen radically to alter a rule that was settled for many years. Second, this is a situation in which the Board's very authority to act in the area is at issue, and it is settled that "[a]n agency may not finally decide the limits of its statutory power," *Social Security Board v. Nierotko*, 327 U.S. 358, 369 (1946). Part I(A), pp. 14-17, *infra*.

The Board's decision in *Amoco IV* fails this test of rationality for two independent reasons.

First, the *Amoco IV* rule rests on premises that are mutually inconsistent. The Board holds that when a duly-elected bargaining representative undergoes "organizational changes that are substantial enough to create an entirely different entity," a "statutory question concerning representation" is posed which "can only be determined through the Board's election procedures." NLRB Br. at 16. The Board also holds that "in general . . . affiliations do *not* destroy continuity of representation," NLRB Br. at 16 n.10 (emphasis added), and thus do not raise a "statutory question concerning representation"; this is true because an affiliation does not ordinarily affect the continued identity of the bargaining representative that the employees have chosen, because the fact that a union has affiliated with some other entity "has no probative value concerning the employees' choice of the [union] as their collective bargaining representative," *American Range Lines, Inc.*, 13 NLRB 139, 154 (1939), and because if, in a particular case, an affiliation does lead to a union's loss of majority support, the Board's representation election processes provide a fully adequate

means of response. But notwithstanding that, in the Board's own view, affiliations do not ordinarily raise a question of representation, the *Amoco IV* rule requires that nonmembers be permitted to vote in affiliation referenda in order to protect their "freedom to select a bargaining representative." Pet. App. 55a n.12 (emphasis deleted).

This rationale is internally inconsistent. The premise that a union affiliation decision involves the "select[ion] of] a bargaining representative" is contrary to the Board's own conclusion that an affiliation does not ordinarily involve such a selection because the representative that has already been selected continues to serve in that capacity. And since a Board-conducted representation election will be held when an affiliation does implicate the selection of a bargaining representative, it makes no sense to state, as *Amoco IV* does, that nonmember voting in union-conducted affiliation referenda is necessary to protect the nonmembers' "freedom to select a bargaining representative." Part I(B), pp. 17-31, *infra*.

Nor can Board counsel's alternative defense of the *Amoco IV* rule withstand analysis. The fact that an affiliation may "significantly affect the union's representation of the bargaining unit," NLRB Br. at 22, does not provide a rational basis for permitting employees who are not members of a union to vote on whether that union should affiliate with another entity; if it did, nonmembers would also be entitled to vote on a host of other union decisions that equally affect them, from the election of union officers to the ratification of collective bargaining agreements. Yet the Board itself recognized in *Amoco IV* that nonmembers are not entitled to participate in those decisions. And affiliation votes cannot be distinguished from these other matters on the ground that the other matters do not call for the Board "to put its imprimatur on the union's decision." NLRB Br. at 23 n. 18. An order requiring an employer to bargain with

a union after an affiliation does not place the Board's imprimatur on the affiliation decision any more than an order to bargain after a union's election of officers or an increase in dues would place the Board's imprimatur on those decisions. Indeed, the Board itself has long rejected the theory that, in the guise of assuring the integrity of its bargaining orders, the Board is empowered to impose all manner of requirements on how unions govern themselves. Part I(B), pp. 31-34, *infra*.

The Board's decision here is irrational in a second and more profound sense: the *Amoco IV* rule is inconsistent with the basic purposes of the National Labor Relations Act. The overall aim of the Act is to "encourag[e] the practices and procedure of collective bargaining" and thereby promote "the making of agreements which will stabilize employment conditions and promote fair working standards." That end in turn requires "stability of bargaining relationships." Yet, the *Amoco IV* rule—and the Board's "due process" regulation of union affiliation elections generally—multiplies in a wholly-unthinking way the occasions for disruptions of industrial stability. That rule permits an employer to seize upon perceived (or pretended) defects in a union's procedures for affecting an organizational chage to cease recognizing and bargaining with that union even though the union is a continuation of the organization the employees chose as their bargaining representative; the employees have not themselves sought to oust the union as their representative; and the employer does not even have a good faith doubt based on objective considerations that the union lacks majority support. Part I(C), pp. 34-36, *infra*.

II. Aside from its failure of reasoning, the *Amoco IV* rule cannot stand for a second and independent reason: its requirement that unions must grant nonmembers the right to participate in the union's decisionmaking process is contrary to Congress' clearly-expressed intent.

Because *Amoco IV* cuts deeply into the association freedom of union members by forcing the members to give a formal vote in their group's affairs to persons who do not elect to join the group and assume the responsibilities of membership—and because granting nonmembers that right runs contrary to the long history of union decisionmaking by union members on all matters, including decisions concerning affiliations—it would take the clearest evidence of congressional intent to conclude that the NLRA, as the Act has been amended, is a grant to the Board of the authority to force nonmember voting in union referenda. The legislative history of both the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959 demonstrates that Congress had no such intent. Part II(A), pp. 36-38, *infra*.

The history of those Acts show: first, that Congress was well aware of the fact that all employees in a represented bargaining unit are not necessarily members of the union that acts as the bargaining representative or even eligible for membership, and that only those who are members of the union participate in making its decisions; second, that Congress decided not to disturb the right of labor unions to prescribe membership eligibility requirements; third, that Congress debated at length the question of how extensive federal regulation of union internal affairs should be and decided not to regulate the procedures by which unions effectuate constitutional changes generally and affiliations and mergers particularly; and fourth, that despite the disagreements over the appropriate extent of regulation, it was common ground throughout the debates that federal regulation should grant voting rights only to union members, and not to nonmembers, because a union "rightfully belong[s]" to its members. Part II(B), (C), pp. 38-47, *infra*. The rule of *Amoco IV* is contrary to these congressional judgments.

There is one further respect in which *Amoco IV* is inconsistent with congressional intent: that decision starts from a fundamental misconception of the role of the Labor Board as Congress delineated that role. Specifically, in enacting the LMRDA, Congress considered proposals to require compliance with the rules being legislated in that law as a condition of a union being certified by the Labor Board as bargaining representative or of being permitted to file unfair labor practice charges. Congress rejected such proposals because the legislature concluded that to adopt such a means of enforcing rules concerning union decisionmaking procedures would be "ineffective in the case of strong unions"; "unfair to the members who have done no wrong but who would suffer . . . the loss of NLRB protection"; and "result in a frustration of the principal purpose of the Labor Management Relations Act, that is, settlement of labor disputes in an orderly, efficient and expeditious manner." Thus, in conditioning an affiliated union's right to obtain a bargaining order from the Labor Board on the manner in which the union made its affiliation decision, the Board has entered a realm Congress specifically decided the Board should not enter and has used its power over representation matters in a way Congress specifically decided those powers should not be used. Part II(C), pp. 47-48, *infra*.

ARGUMENT

I. THE BOARD HAS FAILED TO ARTICULATE A RATIONAL BASIS FOR COMPELLING UNIONS TO GRANT NON-MEMBERS THE RIGHT TO PARTICIPATE IN THE UNION'S AFFILIATION DECISION-MAKING PROCESS

A. Decisions of the National Labor Relations Board, like those of other administrative agencies, are "judicially reviewable for consistency with the [governing] Act, and for rationality." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 501 (1978). The rationality standard, while a deferential one, is, as this Court has recently reaffirmed, far from toothless:

> [T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962). In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Bowman Transp. Inc. v. Arkansas-Best Freight System, supra*, [419 U.S.] at 285; *Citizens to Preserve Overton Park v. Volpe, supra*, [401 U.S.] at 416. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: "We may not supply a reasoned basis for the agency's action that the agency itself has not given." *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). [*Motor Vehicle Mfrs. Ass'n. v. State Farm Mut.*, 463 U.S. 29, 43 (1983).]

The basic requirement of reasoned decisionmaking applies no less where an agency has broad decisionmaking authority under the governing statute than where that authority is more narrowly constricted. *See, e.g., State Farm, supra* (decision under general delegation to promulgate safety standards); *Atchison, T. & S.F. RR. Co. v. Wichita Bd. of Trade*, 412 U.S. 800 (1973) (ratemaking decision); *Labor Board v. Metropolitan Ins. Co.*, 380 U.S. 438 (1965) (decision under authority to establish appropriate bargaining units); *see also First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981) (reversing NLRB determination that partial closings are a mandatory subject of bargaining, after recognizing, *id.* at 675 & n. 14, that Congress "deliberately left" the general statutory words "without further definition" so that the Board would have "the power to define those terms in light of specific industrial practices"). And as the last two cited cases show, this Court has not hesitated to overturn Board decisions that are inconsistent with the Agency's statutory mandate.[6]

There are two reasons why, in this case, particular care is in order in assuring that the Board has met its decisionmaking responsibilities.

First, this is a situation in which the agency has chosen radically to alter a rule that was settled for many years. While "regulatory agencies do not establish rules of conduct to last forever," *State Farm*, 463 U.S. at 42, *quoting American Trucking Assns. Inc. v. Atchison, T. & S.F. R. Co.*, 387 U.S. 397, 416 (1967), nonetheless:

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[6] For recent examples, *see NLRB v. Longshoremen*, —— U.S. ——, 53 L.W. 4919 (June 27, 1985); *NLRB v. Bildisco & Bildisco*, —— U.S. ——, 52 L.W. 4270 (Feb. 22, 1984); *Edward J. DeBartolo Corp. v. NLRB*, 463 U.S. 147 (1983); *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983); *NLRB v. Longshoremen*, 447 U.S. 490 (1980); *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *NLRB v. Baptist Hospital Inc.*, 442 U.S. 773 (1979); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979); *Detroit Edison Co. v. NLRB*, 440 U.S. 201 (1979).

> A "settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to." *Atchison, T. & S.F. R. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 807-808 (1973). *Accordingly, an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis beyond that which may be required when an agency does not act in the first instance.* [*State Farm*, 463 U.S. at 41-42 (emphasis added)].[7]

Second, this is a situation in which it is the Board's very authority to act in a particular area that is at issue. The Board maintains that the NLRA empowers the Agency to regulate union procedures for deciding affiliation questions; it is our position that the Board has no such power. Precisely because, if the Board is correct, the particular regulations concerning the entire process by which unions make affiliation decisions thereafter adopted by the Board will be entitled to considerable deference, the Board should be required to provide a convincing justification for its threshold claim of authority in this area. "An agency may not finally decide the limits of its statutory power. That is a judicial function." *Social Security Board v. Nierotko*, 327 U.S. 358, 369 (1946). Thus, as the Court stated in *Labor Board v. Insuarnce Agents*, 361 U.S. 477, 499 (1960), "[W]here Congress has in the statute given the Board a question to answer, the courts will give respect to that answer; *but they must be sure the question has been asked.*" (Emphasis added.)

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[7] While *State Farm* and *Wichita Bd. of Trade* were both rulemaking cases, there is no apparent reason why "sharp changes of agency course [should not] constitute danger signals to which a reviewing court must be alert," *State Farm v. Department of Transportation*, 680 F.2d 206, 220 (D.C. Cir. 1982), *aff'd. in part, State Farm, supra*, when agency decisionmaking through adjudication is involved. *See* Estreicher, *Policy Oscillation at the Labor Board: A Plea for Rulemaking*, 37 Admin. L. Rev. 163 (1985).

This Court's recognition that "[t]he responsibility to adapt the Act to changing patterns of industrial life is entrusted to the Board," *NLRB v. Weingarten, Inc.*, 420 U.S. 251, 266 (1975), does not diminish the Court's authority to finally decide whether the Board has overstepped the limits of its statutory power here. In contrast to the situation in *Weingarten, see id.* at 265, n. 10, the Board has never sought to justify its change of position at issue here by pointing to new industrial or technological developments. Moreover, union affiliations and mergers have been common since the earliest days of the Act,[8] and the Board has nowhere suggested that the legal issues raised by such union decisions as to the best organizational mode for pursuing their goals have changed in any way in recent years. Rather what has occurred is that, in a five-year period, as the composition of the Board has changed, the Board has gone back and forth on the issue posed here with the result that the issue happens to come to this Court after a 3-2 majority adopted the Board's present position in place of the opposite position the Agency had originally taken in this very case. For all these reasons this is a case in which the Board's claim to deference is at its weakest.

B. In order to evaluate the rationality of the Board's *Amoco IV* rule, it is necessary first to place that rule in its legal context.

Section 9(c) of the Act, 29 U.S.C. § 159(c), empowers the NLRB to determine whether a "question of representation affecting commerce exists," and if so to ascertain the answer to that question by holding "an election by secret ballot" in which all the eligible employees in the relevant "unit appropriate for the purposes of collective bargaining" may register their preference for or against representation. Section 9(a), 29 U.S.C. § 159(a), in

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[8] Note, *Union Affiliations and Collective Bargaining*, 128 U.Pa. L.Rev. 430, 445 *et seq.* (1979); Leisersen & Slichter, *American Trade Union Democracy*, 93 *et seq.* (1959); *see generally* Chitayat, *Trade Union Mergers and Labor Conglomerates* (1979).

turn, provides that if the employees do favor representation, their chosen representative shall be the "exclusive [bargaining] representative of all the [unit] employees." And § 8(a)(5), 29 U.S.C. § 158(a)(5), makes it an unfair labor practice for an employer "to refuse to bargain collectively with the [§ 9(a)] representative of his employees."

Since its earliest days, the Labor Board has followed two rules, both clearly stated in the Board's brief, for applying these general principles in the context of a change in the organizational structure of a union that is serving as an exclusive bargaining representative.

First, "the Board holds that organizational changes that are *substantial enough to create an entirely different entity* raise a statutory question concerning representation which can only be determined through the Board's formal election procedures." NLRB Br. at 16 (emphasis added); *see id.* at 27-31. In those procedures, the question put to the employees in the bargaining unit—all of whom have the right to vote—is whether those employees desire to be represented by the new entity or not to be represented at all.

Second, organizational change that is *not* "substantial enough to create an entirely different entity" is "not sufficient to destroy continuity and thus raise a question concerning representation." NLRB Br. at 16-17. *See also* pp. 19-24 *infra*. In such cases, as in all others in which a bargaining representative has been selected, the employer is obligated to continue to recognize and bargain with the (reorganized) union unless and until either the union loses majority support, or the employer comes to entertain a "good faith and reasonably-grounded doubt" based on "objective considerations" that the union lacks majority support.[10] The critical point is that the union reorganization is not sufficient, in and of itself, to

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[10] *Terrell Machine Co.*, 173 NLRB 1480, 1481 (1964), *enf'd*, 427 F.2d 1088 (4th Cir. 1970); *see also, e.g., Celanese Corp.*, 95 NLRB 664, 672 (1951); *Burger Pits*, 273 NLRB No. 127 (1984).

create such doubt, excuse the employer from his bargaining obligation, or otherwise raise a question of representation.

Amoco IV does not purport to change either of these rules. Rather, what *Amoco IV* holds is that "where the change [the bargaining representative] has undergone is *not* sufficient to destroy continuity and thus raise a question concerning representation," NLRB Br. at 16-17 (emphasis added), the Board is nonetheless empowered to compel the union to grant employees in the bargaining unit who have *not* joined the union the right to vote in a union-conducted election on whether the union to which those employees do not belong should affiliate with some other entity. As we proceed to show, the rationale offered by the Board for this rule is at war with the rationale of the other two rules which together comprise the Board's "continuity doctrine," and the Board law based on these conflicting rules does not meet the test of rationality.

1. *The Continuity Doctrine And Affiliation Decisions*— From the beginning, the Labor Board "has in general found that affiliations do not destroy continuity of representation," NLRB Br. at 16 n. 10, and has therefore held that affiliations do not pose a question of representation.[11] This doctrine rests on a two-part rationale.

First, the Board has recognized that a change in a union's affiliation status does not ordinarily destroy the identity of that union and thus does not ordinarily vitiate the force of the original employee selection of the union as the bargaining representative for the unit. The point is first made in *American-Hawaiian Steamship Co.*, 10 NLRB 1355, 1366 (1939), where the Board, in requiring employers to continue to bargain with a local which had left the International Longshoremen's

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[11] This rule was first stated in *Newark Rivet Works*, 9 NLRB 498 (1938) and most recently reaffirmed in *Insulfab Plastics Inc.*, 274 NLRB No. 126 (March 11, 1985). We trace the evolution of the doctrine at pp. 24-28 *infra*.

Association, AFL, and had affiliated with the International Longshoremen's and Warehousemen's Union, CIO, stated: "The Union certified by us did not cease to exist" and therefore the employers "at all times after the certification were under a duty, upon request, to bargain collectively with the Union." Most recently, in finding that the affiliation of an independent union with an international did not result in a change in the bargaining representative, the Board explained: "The Independent after affiliation remains the same small platoon it always was but it now can arrive at the bargaining table with newly-acquired reinforcements." *Insulfab Plastics, Inc.*, 274 NLRB No. 126, ALJ slip op. at 15 (March 11, 1985).

To be sure, as the Board has noted, a change in affiliation may result in a "new contract of association" for the union or in other similar changes. *Harris-Woodson Co.*, 85 NLRB 1215, 1217 (1949), *enf'd*, 179 F.2d 720 (4th Cir. 1950). But such changes—like amendments to a union's constitution—do not affect the continued *identity* of the union. As Chief Judge Parker stated in *Harris-Woodson*:

> Metaphysical arguments as to the nature of the entity with which we are dealing should not be permitted to obscure the substance of what has been done or to furnish a smoke screen behind which the company may with impunity defy the requirements of the statute that it bargain with the representative that its employees have chosen. The identity of that representative, composed entirely of the company's employees, was not changed either by its change of name or its change of affiliation. [179 F.2d at 723.]

The Board has therefore continually "regard[ed] . . . 'continuity of organization' as the governing test in determining whether one labor organization is identical with another having a different name and affiliation." 85 NLRB at 1217. *See also, e.g., Cochran Co.*, 112 NLRB 1400, 1408 (1955).[12]

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[12] The paradox that organic entities—a man going through childhood, maturity and old age or a flowing river—stay the same

The second component of the continuity doctrine's rationale is the Board's consistent recognition that, as a general matter, the fact that a union has affiliated with some other entity "has no probative value concerning the employees' choice of the [union] as their collective bargaining representative." *American Range Lines, Inc.*, 13 NLRB 139, 154 (1939). The reason why this is so warrants some elaboration.

When employees are called upon to vote in a representation election, the question they are asked is not whether they desire representation from an organization whose specific attributes are fixed and guaranteed but rather whether they desire to be represented by an organization

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while changing is one that has fascinated philosophers from the pre-Socratic days on. And democratic organizations, which in their essence are systems for continuously effecting change through orderly processes, are organic entities in this sense.

The United States of America, for example, has not lost its identity through its westward expansion, the sweeping changes brought about by industrialization and the Federal Government's response, or through the new role the United States has assumed in world and regional organizations. No one suggests, therefore, that the original consent of the governed that was obtained when the Constitution was ratified in 1789 needs to be resecured in light of these changes.

It would make little more sense to suggest that a union that does not reconfigure itself but that does evolve over time—as all organic bodies do—should be required to resecure the consent of the bargaining unit employees to be their representative. It is not surprising, therefore, that virtually all of the cases in which the Board has found that a union transfiguration poses a representation question were instanecs of schism, *viz.*, instances in which a division occurred within the preexisting bargaining representative and competing claims were made as to which entity is the "true" rep-representative. *See, e.g., Brewster Aeronautical Corp.*, 14 NLRB 1024 (1939); *Brightwater Paper Co.*, 54 NLRB 1102 (1944); *Hershey Chocolate Corp.*, 121 NLRB 901 (1958). *But cf. Foote Brothers Gear Machinery Corp.*, 14 NLRB 1045 (1939), *enf. denied*, 114 F.2d 611 (7th Cir. 1940) (no continuity where charter of the preexisting union revoked and no clear line of succession to the union claiming bargaining rights).

which, like any other democratic organization, will be engaged in an ongoing process of evolution in accordance with the desires of the membership. The world will not stand still; times change and circumstances change. As a consequence of the restless flow of events, during a union's tenure as bargaining representative, new leadership may (and usually will) be elected; new policies, new programs and new philosophies may (and usually will) be pursued; the union's constitution may (and usually will) be amended to establish new structures, new procedures and new means of furthering its goals; the union's size or jurisdiction may (and usually will) change (as new units are organized or existing units cease to exist or cease to be represented); and the union's membership will certainly turn over. What is *most* predictable—what is the only certainty—when employees are called upon to decide whether they desire to be represented by a bargaining representative is that the union for (or against) which the employees are voting will not be static but will be in a constant state of transformation.

Because that is so, the fact that a union, after selection as the bargaining representative, undergoes a change in its leadership, in its policies or in its structure has never been thought, in and of itself, to put in doubt the union's continued majority status.[13] Indeed, both as a

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[13] To justify an employer's refusal to bargain with a certified representative the Board has required actual evidence as to employee sentiment, and not some proxy such as proof of employee turnover, *e.g., National Plastic Products Co.*, 78 NLRB 699 (1948); *Laystrom Manufacturing Co.*, 151 NLRB 1482 (1965), *enf. denied*, 359 F.2d 799 (7th Cir. 1966), or even proof that less than a majority of the unit are members of the union or are paying union dues, *e.g., Wald Transfer & Storage Co.*, 218 NLRB 592 (1975); *Terrell Machine Co.*, 173 NLRB 1480 (1969), *enf'd*, 427 F.2d 1088 (4th Cir. 1970). Indeed, even the filing of a representation petition by a rival union, *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982), or of a decertification petition, *Dresser Industries*, 264 NLRB 1088 (1982), is not sufficient to provide a "good faith doubt" of the incumbent union's majority status (unless, of course, the peti-

matter of experience and logic, the *lack* of union change in the face of change all around is at least as likely to jeopardize employee support as is the process of evolution. And in this regard, an affiliation is no different than the host of other changes a union may undergo. Simply stated, there is neither any empirical evidence for the view, nor any logical basis for the belief, that an affiliation is more likely to threaten a union's continued majority status than, *e.g.*, a change in leadership or an increase in dues.

Nor, is there any reason for engaging in abstract speculation as to when change or the lack of change may erode majority support. If, in a particular case a change in the union, such as an affiliation, does lead to the union's loss of majority support, the Board's processes provide a fully adequate means of response. Specifically, under § 9(c), the employees in a bargaining unit who by reason of the change no longer wish representation may petition for a Board-conducted decertification election; if the Board finds that a "question of representation exists" a § 9 election will be held in which all employees in the unit may vote on whether they desire continued representation by the union.[14]

There is, therefore, no reason for treating an affiliation (or any other development in a bargaining representa-

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tion is signed by a majority of the bargaining-unit employees). *See also Bethlehem Steel Co.*, 86 NLRB 340, 364 (1950) ("the mere passage of time is not, in the absence of more concrete factors, a circumstances affecting the presumption [of continued majority support]").

[14] The Board has developed certain "bar" rules—"self-imposed and discretionary in application," *Avco Mfg. Corp.*, 106 NLRB 1104, 1105 (1953)—that generally preclude § 9 elections during specified periods of times such as during the life of a collective bargaining agreement, *e.g.*, *General Cable Corp.*, 139 NLRB 1123 (1962). Those rules are, however, relaxed where, as a result of the reconfiguration of a union, a genuine question of representation exists. *See, e.g.*, cases cited n.12 *supra*.

tive's ongoing evolution) as a *proxy* for a loss of support —as posing a representation question—since the Act provides a simple means for employees to raise such a question *directly*. Thus the continuity doctrine wisely refuses to *assume* that an affiliation *ipso facto* puts the union's support in doubt and thus refuses automatically to find a representation question in an affiliation.

The instant case well illustrates the soundness of the continuity doctrine in this regard. Seattle First's employees decided, in a representation election, that they desired representation by FIEA. The Union's constitution expressly authorized "affiliation with other labor organizations." Pursuant to that authority, by the vote of over 60% of the union members participating, FIEA became an affiliate of UFCW. After the affiliation, the organization continues to exist as a discrete entity with its own membership—employees of Seattle First—and its own officers and unit representatives. FIEA remains in charge of its own collective bargaining negatiations and the decision whether to strike remains with FIEA's membership. In short, the bargaining representative that the employees chose continues as their representative, and there is no reason to believe—and nothing in this record to suggest—that the representative has lost majority support by virtue of its decision to join hands with UFCW. In these circumstances, it makes all the sense in the world to hold, as the continuity doctrine does, that no question of representation is posed by the affiliation.

2. *Amoco IV and the "Due Process" Requirements*— As previously noted, notwithstanding the absence of a representation question, *Amoco IV* holds that the Board is empowered to compel unions to grant nonmembers the right to participate in the union's affiliation decision-making process. The Board in *Amoco IV* justified this rule as one of the "due process requirements which must be met in order to have a valid affiliation election." Pet. App. 53a. To evaluate the rationality of *Amoco IV*,

therefore, it is useful to step back and examine these "due process" requirements.[15]

In its early cases formulating the continuity doctrine, the Board sometimes referred to the manner in which an affiliation decision had been made. For example, in *Harris-Woodson Co., supra*,

> the Trial Examiner based his conclusion that the 2 unions are the same upon a finding that the membership of United consists of the same individuals that constituted the membership of Local 1274. Although the employees present at a membership meeting of Local 1274 voted unanimously to affiliate with the Textile Workers Union of America . . . only about 18 of a total membership of 23 were present at the meeting. . . . [T]he membership of the two groups is not identical. Even if this were true, it is not controlling in view of the fact that at least approximately three-fourths of the members of Local 1274 are members of United. . . . So far as appears . . . those employee members absent from the meeting have not split off from those who voted to affiliate . . . on that or any other question. [85 NLRB at 1216-17 & n.4.]

As the quotation shows, this procedural inquiry was *not* originally separate from the overall continuity inquiry, but simply part of determining whether factual support exists for a continuity conclusion: the Board reasoned that the fact that a majority of the union's members concurred in the affiliation tends to show that the mem-

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[15] As the Board's brief tacitly acknowledges, NLRB Br. at 20 n. 14, despite the Board's use of "due process" terminology there is no *constitutional* dimension to this case: the Board is not a roving constitutional commission entitled to impose norms not found in its governing statute, the NLRA; nor is an internal union election a procedure involving state action and thereby governed by the federal Constitution. *Cf. Finnegan v. Leu*, 456 U.S. 431 (1981); *Steelworkers v. Sadlowski*, 457 U.S. 102 (1982) (internal union decisions are not governed by the First Amendment but only by federal statutory provisions.)

bership of the two organizations is substantially the same, thereby supporting a determination that the bargaining representative remains the same. *See also, e.g., Emery Industries, Inc.*, 148 NLRB 51, 52-53 (1964). Proof of procedural regularity, therefore, was not, originally, either indispensable nor was that proof tested by a fixed set of Board guidelines reflecting the Agency's notions of "due process."

Specifically, the Board did not "always require[] reliable evidence of employee consent," as the NLRB now claims, *see* NLRB Br. at 19. For example, in *Newark Rivet Works*, 9 NLRB 498, 511 (1938), the Board "f[ou]nd little merit in [the employer's] contention that because the action of the executive committee in changing the national affiliation of the union was ratified by a vote of less than a majority of the union members, [the employer] was excused from bargaining with the [local]." And in *The East Ohio Gas Company*, 140 NLRB 1269, 1270 (1963), the Board declined to concern itself at any length with evidence concerning the affiliation election, because "in any event . . . the [union] maintained its identity as a separate entity with the same membership, officers and committees." *See also, e.g., Cadillac Automobile Co. of Boston*, 90 NLRB 460 (1950); *Retail Clerks v. N.L.R.B.*, 373 F.2d 655 (D.C. Cir. 1967); *Union Carbide and Carbon Corp. v. N.L.R.B.*, 244 F.2d 672 (6th Cir. 1957). And the Board has viewed other procedural issues arising in the course of a union's affiliation decision such as "whether or not the membership meeting is called in conformity with the Union's constitutional requirements . . . [as] *no concern of the Board* . . . [as long as] the affiliation . . . had no effect upon the structure, functions, or membership of the Local Union." *Waterway Terminals Corp.*, 120 NLRB 1788, 1789 (1958) (emphasis supplied). *See also R. C. Williams & Co.*, 107 NLRB, 933, 934 n.2 (1954).

As time went on, the Board began to develop a second, largely separate strand of affiliation cases. In these cases,

such as *Factory Services, Inc.*, 193 NLRB 722 (1971), *Rinker Materials Corp.*, 162 NLRB 1689 (1967), and *M. A. Norden Co.*, 159 NLRB 1730 (1966), the Board insisted upon evidence of employee consent because, given "the degree of change in the nature of the local," the "successor" local was "*not* a continuation of the old." *N.L.R.B. v. Commercial Letter, Inc.*, 496 F.2d 35, 41 (8th Cir. 1974) (emphasis supplied) (distinguishing cited cases and holding that where there *is* continuity of representation, "the changes [are] . . . primarily in the internal makeup of the union, [and] there is no requirement that prospective members be allowed to vote on them").

The Board cases just reviewed set out a coherent doctrine: general evidence of regularity in an affiliation election and of majority membership support, while not essential to a finding of continuity of representation, was nonetheless deemed relevant to such a finding. And where evidence of continuity was lacking, the Board might, in the central interest of industrial peace, nonetheless approve a transfer of bargaining rights if a union affiliation election had been conducted in a fashion substantially replicating Board procedures.

The rule of *Waterway Terminals, supra*—that the Board will *not* ordinarily concern itself in any detail with the internal regularity of an affiliation or other reconfiguration—began to give way, however, in two directions. First, it was suggested that even where there *is* continuity of representation, the Board might nonetheless disapprove a transfer of bargaining rights if there had been "substantial irregularity" in applying the union's constitution and bylaws during an affiliation or merger election. *Gate City Optical Co.*, 175 NLRB 1059, 1069 n.3 (1969). *See also Hamilton Tool Co.*, 190 NLRB 571, 574 n.8 (1971). Second, even where the Board found continuity of representation, the Agency began to impose its *own* standards on unions of what must be done in a

proper affiliation election. While this began as an effort simply to assure generally that "the change reflected a majority view" among union members, *North Electric Co.*, 165 NLRB 942, 942 (1967), the Board's role soon escalated, at the behest of employers, into a detailed inquiry into such matters as the protections for a secret ballot; the timing of the notice; the manner of holding the election; and the system for counting the ballots. *E.g., Hamilton Tool Co., supra; East Dayton Tool & Die Co.*, 190 NLRB 577 (1971); *J.H. Day Co.*, 204 NLRB 863 (1970); *Perco, Inc.*, 204 NLRB 1036 (1973).

Once the Board entered the realm of "due process" regulation of affiliation elections, the Agency was besieged by claims from employers that an affiliation election was invalid because limited to union members. In *North Electric Co., supra*, the Board rejected such claims, and in *Amoco III, supra*, the Agency reaffirmed that ruling, stating that "affiliation vote procedures, including the voting status of non-members, are internal union matters." 239 NLRB at 1195. But in *Amoco IV* the Board overturned those holdings and adopted the rule at issue here: "[I]n order to provide adequate due process safeguards in an affiliation election, all unit employees, whether union members or not, must be permitted to participate and vote in an affiliation election." Pet. App. 54a.

3. *The Incompatability of the Continuity Doctrine and the Amoco IV Due Process Requirements*—As the foregoing review shows, the Board's "due process" requirements for affiliation elections developed almost accidentally. At no point did the Board engage in a reasoned discussion of its authority, or lack of authority, to create such requirements. It is not surprising, therefore, that the Board majority in *Amoco IV* was puzzled by the incongruity of the then-prevailing rule requiring "due process" in "internal union matters." Pet. App.. 53a.

Rather than recognizing that incongruity as the occasion for reexamining its "due process" rules, the Board majority in *Amoco IV* attempted, many years after its development, to rationalize those requirements and in so doing to extend their reach. But as we proceed to demonstrate, the explanation advanced by the Board majority for "due process" regulation cannot be reconciled with the Board's continuity doctrine.

(a) The principal justification offered in *Amoco IV* for "due process" regulation of union affiliation decisions, including extending the franchise to non-members, is that such decisions involve " 'the selection of a bargaining representative.' " Pet. App. 53a. The Board thus thought it "inconsistent to permit all unit employees to vote in a representation election but, when the question is one of affiliation with another union, to permit only union members the right to vote." *Id.* And on that ground the Board extended the franchise to non-members in affiliation votes to protect their "freedom to select a bargaining representative." *Id.* 55a n.12 (emphasis deleted).

This entire rationale is at war with the continuity doctrine. The premise that a union affiliation election involves "the selection of a bargaining representative" is contrary to the central teaching of that doctrine: an affiliation —like the other evolutionary changes unions continuously effect—does *not* ordinarily raise a question of representation because, in most cases, the union that has already been selected continues as the on-going bargaining representative. Indeed, the very fact that, under the continuity doctrine, a representation election *will* be required if there is a *discontinuity* in the bargaining representative demonstrates that a union affiliation election is entirely different from a Board representation election.[16] That being so, there is no inconsistency with § 9

[16] If a union affiliation election were tantamount to a representation election, it would necessarily follow that the election would be required to be conducted on a bargaining-unit by unit basis, with

principles in limiting voting in union affiliation elections to union members. And because a representation election will be required when an affiliation *does* implicate the selection of a bargaining representative, the Board is simply wrong in stating that a rule requiring nonmember voting in union affiliation elections is necessary to protect the nonmembers' "freedom to select a bargaining representative."

The illogic of the *Amoco IV* rule is highlighted by the difference in the questions posed in a representation election triggered by a union's affiliation decision and in the underlying affiliation election. In the representation election, the question put to the bargaining unit would be whether the employees desire to be represented by the affiliated entity or not at all; the affiliation would be a given, and those who disfavored the affiliation would have to decide whether, notwithstanding its consummation, they still desire union representation. In contrast, in the affiliation election, the participants decide whether they prefer the union to be affiliated with another entity or to be unaffiliated.

But, as the Board's rationale suggests and as we show in part II *infra*, the Act grants the entire corpus of employees in a bargaining unit the right to participate only in the selection of the bargaining representative and proceeds on the premise that the representative once selected is to be governed by its members. And the Board has failed to supply any justification for permitting non-

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the results in each unit determinative for that unit. But where a union represents more than one unit, that is a logical impossibility: the union as an entity either affiliates or does not affiliate, and the union cannot accommodate the conflicting views of differing units. Not surprisingly, the Board has rejected the proposition that affiliation votes must be conducted unit-by-unit. *See William B. Tanner Co.*, 212 NLRB 566 (1974). This further confirms that an affiliation election is not synonymous with a representation election.

members of a union to register their preference as to whether the union to which they do *not* belong should affiliate with some other entity when their statutory right to participate in the selection of the bargaining representative is in all events secure.

(b) In the brief to this Court, the Board's counsel propose an alternative justification for the *Amoco IV* rule. Relying on a single phrase in that opinion—"affiliation votes affect the interests of all employees," Pet. App. 53a—Board counsel argue as follows:

> Even where an affiliation does not result in sufficient changes in a union to create a completely new entity, such an organizational change can still significantly affect the union's representation of the bargaining unit. . . . The[] changes [resulting from affiliation] affect not only the internal relationship between the independent union and its members, but also the relationship between the independent union and all of the employees it represents in its capacity as statutory bargaining representative.
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> An affiliation thus necessarily has the potential for changing the relationship between the statutory representative and the represented employees.
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> * * *
>
> [E]ven where the change is not substantial enough to create a new entity, a union organizational change —specifically a change in affiliation—has a sufficient potential for affecting the union's representation of the bargaining unit so that all of the employees in the unit have a legitimate interest in voting on the change. [NLRB Br. at 22-23, 26.]

This explanation proves so much as to end up proving nothing at all. There are all manner of union governance decisions that have the potential to "significantly affect the union's representation of the bargaining unit," and as to which all "employees in the unit" would in that sense have a "legitimate interest in voting." Without affiliating or merging, for example, a union can: ex-

pand its membership to include new units of employees, or new geographical areas; raise dues substantially and, where there is a union security agreement, thereby increase the financial obligation of nonmembers; completely alter the governance of the union by, for example, changing the number and type of officers or giving the officers or executive board more authority; or provide for a new manner of approving strikes or settlements by, for example, establishing or eliminating ratification votes. And aside from these structural changes, the "union's representation of the bargaining unit" can be significantly affected by the choice of the officers and by a host of other decisions that a union is continually called upon to make.

If the effect of a union's affiliation decision on nonmembers were sufficient to justify extending to them the franchise within the union on that issue, it would necessarily follow that nonmembers would likewise be entitled to vote on all of these other questions which equally can affect them. Yet plainly that is not the Board law; even *Amoco IV* recognizes that nonmembers are not entitled to participate in "strike votes, contract ratification votes, etc." Pet. App. 53a. *See also* pp. 36-47, *infra*.

Board counsel attempt to remedy this defect in their argument as follows: "unlike affiliation votes, the other matters do not call for the Board to put its imprimatur on the union's decision . . ." NLRB Br. at 23 n.18.[17] In this

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[17] *See also* NLRB Br. at 18 (Board power to order non-member voting derived from the fact that the union "seeks the aid of government to enforce [the affiliation] choice").

Counsel's distinction finds no support in the Board's *Amoco IV* decision; what the Board there stated was that

> Unlike strike votes, contract ratification votes, etc. . . . which the dissent would equate with affiliation votes, only the latter directly impacts upon matters within the breadth of the Act and results in an undermining of the Board's own election and certification procedures. [Pet. App. 53a.]

In other words, the *Board's* rationale for permitting non-members to vote only in union affiliation elections is that only those elections implicate "the Board's own [representation] election and certification

regard Board counsel stress the fact that in the wake of an affiliation, the Board may be requested to "amend[] the designation of the employees' bargaining representative." NLRB Br. at 18. But if the Board grants that request all that such an amendment would signify is that the union that was certified as the bargaining representative continues as an on-going entity under a different name. *See, e.g., Missouri Service Comm'n*, 87 NLRB 1142, 1143 n.3 (1949) (amendment "is not to be construed as a recertification"). And Board counsel conveniently overlook the fact that *Amoco IV* applies in terms even where there is *no* request for a certification amendment if the employer "raises the question of affiliation . . . as a defense to an 8(a)(5) charge." Pet. App. 53a.

What Board counsel fail to explain is why it is that the Board puts its "imprimatur on the union's [affiliation] decision" by ordering an employer to bargain with a bargaining representative that was initially selected by the majority of the employees in the bargaining unit and that (despite an affiliation) continues as an ongoing entity. Nor do Board counsel explain why ordering bargaining after an affiliation would place the Board's "imprimatur" on the affiliation decision, but ordering bargaining after a union election, a union constitutional amendment or any other union decision would not place the Board's imprimatur on these decisions.

Putting those failures aside, the nub of the matter is that an order requiring an employer to bargain with a particular union signifies nothing more than the Board's finding that the union was selected by the employees as their bargaining representative, that the union continues to exist, and that its majority status has not been placed in question. And that is precisely what the continuity doctrine teaches to be true ordinarily of a bargaining representative that affiliates with another entity. To

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procedures." We have already demonstrated, *supra* at pp. 29-31, that this rationale cannot withstand analysis.

view a bargaining order as going further—as placing an "imprimatur" on the affiliation decision—would establish a limitless doctrine that would allow the Board to impose all manner of requriements on unions in the guise of assuring the integrity of its bargaining orders.

It is precisely for this reason that the Board itself has long rejected this very view. For example, in *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962), the Board refused an employer's request to deny certification to a union that had won a representation election on the ground that the union was corrupt; the Board could "find no warrant in the statutory scheme to authorize such action," *id.* at 851, because "[i]t must be remembered that . . . the Board merely provides the machinery whereby the desires of the employees may be ascertained, and the employees may select a good labor organization, a bad labor organization, or no labor organization . . . ," *id.* at 851-852.[18] Thus the fact that, after an affiliation, the Board may be called upon to change the name on the certification of a bargaining representative or order bargaining where there is a continuity in representation does not itself justify the Board in regulating the union's decision-making processes with respect to the affiliation. Accordingly counsel's attempt to supply a justification for such regulation in cases where no representation question is posed—like the Board's own attempt—fails the test of rationality.

C. Our showing thus far establishes that the *Amoco IV* rule is irrational in the sense that the rule rests on mutually inconsistent premises. While that showing is

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[18] *See also, e.g., Burns Int'l Security Service, Inc.*, 250 NLRB 959, 963 (1981); *Carroll Contracting*, 247 NLRB 890, 891 (1980); *Whittlesea Checker Taxi, Inc.*, 237 NLRB 1038, 1039 (1978); *Handy Andy, Inc.*, 228 NLRB 447 (1977); *Hotel Properties, Inc.*, 194 NLRB 815 (1972); *Aspen Skiing Corp.*, 143 NLRB 707, 709 (1963); *William J. Burns Int'l. Detective Agency*, 138 NLRB 449, 451 (1962); *Hamilton Brothers, Inc.*, 133 NLRB 868 (1961).

dispositive with regard to what the Board has done, we would be derelict if we did not add that *Amoco IV* is irrational not only under the tests of simple logic, but in an even more profound way: the Board's decision is inconsistent with the NLRA's basic purposes.

The overall aim of the NLRA is, as the Act's preamble states, to "encourag[e] the practice and procedure of collective bargaining." As the legislative history of the Wagner Act shows—and as this Court's decisions confirm, *e.g. Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 236-37 (1938)—that aim is itself a means to a greater end: "the making of agreements which will stabilize employment conditions and promote fair working standards," 2 *Legislative History of the National Labor Relations Act of 1935*, at 2336 (Sen. Wagner).

To achieve that end requires "stability of bargaining relationships," *Machinists Local v. Labor Board*, 362 U.S. 411, 425 (1960); the collective bargaining system could not function if the parties were constantly uncertain of —or engaged in a struggle over—the continued existence of a bargaining relationship. It is indeed in part in recognition that the "industrial stability sought by the Act would unnecessarily be disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship," *State Farm Mutual Auto. Ins. Co.*, 225 NLRB 966, 967 (1976), that the Board has held that reconfigurations of a bargaining representative do not ordinarily pose a question of representation.

The *Amoco IV* rule—and the due process doctrine generally—multiplies in a wholly-unthinking way the occasions for such unnecessary disruptions of industrial stability. That rule permits an employer to seize upon perceived (or pretended) defects in a union's procedures for affecting an organizational change to cease recognizing and bargaining with that union even though the union is a continuation (albeit in reorganized form) of the or-

ganization the employees chose as their bargaining representative; the employees have not themselves sought to oust the union as their representative; and the employer does not even have a good faith doubt based on objective considerations that the union lacks majority support. This rule thus destabilizes bargaining relationships by "allow[ing] employers to rely on employees' rights in refusing to bargain with the formally designated union," *Brooks v. Labor Board*, 348 U.S. 96, 103 (1954); allowing employers to do so, as this Court has recognized, "is not conducive to th[e] end [of industrial peace], it is inimical to it," *id.*

II. THE AMOCO IV RULE IS CONTRARY TO CONGRESS' CLEARLY EXPRESSED INTENT TO VEST CONTROL OF UNION DECISIONMAKING IN THE UNION'S MEMBERS AND TO DENY THE LABOR BOARD A ROLE IN REGULATING THE PROCESS OF UNION DECISIONMAKING

There is a second and independent reason why the *Amoco IV* rule cannot stand: its requirement that unions must grant nonmembers the right to participate in the union's decisionmaking processes is contrary to Congress' clearly-expressed intent to regulate those union processes to a limited extent; to vest control of those processes in the union's members; and to deny the Labor Board a role in regulating those processes.

A. Before turning to the federal labor laws and their legislative history, we begin by noting that *Amoco IV* cuts deeply into the associational freedom of union members. Heretofore, the members of a union have been free to decide on the direction and shape of their organization on their own. We are aware of no union constitution that at any time has granted voting rights to non-members in union decisionmaking; the uniform practice, so far as we can determine, has been precisely the opposite. And this has always been true of union decisionmaking with respect

to whether to ajliate with a national or international union. (That type of decision, it should be noted, was quite common to 1935 when the NLRA was first enacted and in 1947 when the NLRA was amended by the Labor Management Relations Act, 61 Stat. 136, ("LMRA"), a period in which national unions affiliated with two rival labor federations (the American Federation of Labor on the one hand and Congress of Industrial Organizations on the other) competed vigorously with each other to woo local unions from one body to the other.[19])

The union members' decisions have, of course, always been subject to the test of a Board representation election called to decide whether the bargaining unit employees as a whole still desire to be represented by the union (as the union had evolved). But nonmembers have not had the right to stand aloof from the union and still participate in the union's own processes for determining how the union would evolve; those processes have been reserved for those who elect to join the union and whom the union elects to accept into membership.

This right of union members to control their organization lies at the heart of their freedom of association; that freedom "necessarily presupposes the freedom to identify the people who constitute the association *and to limit the association to those people only.*" *Democratic Party v. Wisconsin*, 450 U.S. 107, 122 (1981) (emphasis added).[20] A "regulation that forces the group to accept

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[19] See n.8 *supra*; *see generally* W. Galenson, *The CIO Challenge to the AFL* (1960).

[20] At issue in *Democratic Party* was a state law analogous to the *Amoco IV* rule: a law requiring political parties to allow persons not affiliated with the party to participate in the process by which the party nominated its presidential candidates; the Court held that law unconstitutional. *Cf. Rosario v. Rockefeller*, 410 U.S. 752 (1973) (sustaining state law establishing a durational affiliation requirement for voting in a primary election).

members it does not desire" thus is a "clear[] example of an intrusion into the internal structure or affairs of an association." *Roberts* v. *United States Jaycees*, —— U.S. ——, 52 L.W. 5076, 5080 (July 3, 1984). And a regulation that forces a group to give a formal vote in the group's affairs, which is one of the privileges of membership, to persons who elect not to join the group (and assume the responsibilities of membership) is an ever clearer example of such an intrusion.

None of this is meant to suggest that Congress could not have empowered the Labor Board to compel unions to grant nonmembers voting rights if Congress had concluded that compelling interests so warranted. But given the long history of, and fundamental values supporting, the principle of union decisionmaking by union members—history and values of which Congress was fully aware—it would take the clearest evidence of congressional intent to conclude that the NLRA, as the Act has been amended, is a grant to the Board of the authority to force nonmember voting in union referenda. And, as we proceed to show, the legislative history of the federal labor laws, far from supporting that conclusion, demonstrates that Congress had no such intent.

B. (1) The 1947 LMRA contains the first set of federal statutory rules addressed to what unions may and may not do. In adopting that law, Congress was well aware of the fact that all employees in a represented bargaining unit are not necessarily members of—or even eligible for membership in—the union that acts as the bargaining representative; indeed, that fact formed the predicate for the extensive congressional consideration in 1947 on whether to permit unions to negotiate collective bargaining agreements that require employees, as a condition of employment, to maintain membership in the union that serves as bargaining representative.[21]

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[21] *See, e.g.*, H.R. Rep. 245, 80th Cong. 1st Sess. at 29, 33-34 (majority report) 79-82 (minority report) (1947); S. Rep. 105,

The solution Congress ultimately arrived at in the LMRA was: to leave unions free to establish eligibility rules for the union membership so that not all bargaining unit employees necessarily would be union members; to permit unions to negotiate union security agreements that require employees to meet the financial obligations of membership, *see Labor Board v. General Motors*, 373 U.S. 734 (1963); but to prohibit an employer from discriminating against a nonmember and a union from causing such discrimination if the nonmember was discriminatorily denied union membership or if the individual's tender of dues was refused. This solution is embodied in §§ 8(a)(3), (b)(1) & 8(b)(2) of the Act, 29 U.S.C. §§ 158(a)(1), (b)(1)(A), (b)(2). Senator Taft, the principal sponsor of the Senate bill, explained that under the bill:

> The union could refuse [an employee] admission to the union or expel him from the union; but if he were willing to enter the union and pay the same dues as other members of the union, he could not be fired from his job because the union refused to take him. [2 Legislative History of the Labor Management Relations Act of 1947 at 1142 (GPO 1498) ("LMRA LegHist.")] [22]

Part 1, 80th Cong., 1st Sess. at 5-7, 20, 21-22 (majority report), (1947); S. Rep. No. 105, Part 2, 80th Cong. 1st Sess. at 8-10 (minority report).

[22] Congress as an integral part of this complex of provisions did, of course, enact § 8(b)(1)(A), 29 U.S.C. § 188(b)(1)(A), which makes it unlawful for a union "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7." That section, as this Court has held, provides that a union's decisions are subject to NLRB scrutiny to determine whether those decisions abridge a § 7 right. *See, e.g., Scofield v. NLRB*, 394 U.S. 423, 429 (1969) (test is whether a union rule "frustrates an overriding policy of the labor laws"); *Pattern Makers v. NLRB*, —— U.S. ——, 53 L.W. 4928 (June 27, 1985). But nothing in the LMRA, in the Act's legislative history or in this Court's decisions provides any support for the notion that § 7 grants employees who are not union members a right to participate in the union's decisionmaking processes.

Congress also was aware in 1947 that once a union is selected as a bargaining representative, all of its decisions are made solely by its members, and not by nonmembers, but Congress manifested no dissatisfaction with that state of affairs. To the contrary, while the House of Representatives concluded that "[h]aving given to unions great power over workers" Congress should "make sure that the unions will operate democratically," H.R. Rep. No. 245, 80th Cong., 1st Sess. at 31 (1947), *reprinted in* 2 LMRA Leg. Hist. at 322, the provision of the House bill drafted to achieve that end was "a bill of rights for *union members*," *id.*, to be enforced through the Labor Board. *See* H.R. 3020, § 8(c), 80th Cong., 1st Sess., 1 LMRA Leg. Hist. at 179-83. And even that provision, which would have regulated union procedures for electing officers, increasing dues, imposing discipline and deciding to strike, would not have applied at all to decisions relating to changes in organizational structure.

Eventually, the House's bill of rights was deleted from the final legislation because, in Senator Taft's words, "[t]he Senate conferees refused to agree to inclusion of this subsection in the conference agreement since they felt that it was unwise to authorize an agency of the Government to undertake such elaborate policing of the internal affairs of unions as this section contemplated without further study of the structure of unions." 2 LMRA Leg. Hist. at 1540. Nonetheless the consideration given to a "bill of rights" in 1947 is significant here because its provisions reveal that those most supportive of regulating union decisionmaking at that time sought to do so in a manner that provided union members federally guaranteed rights to control certain decisions of their organization and because the 1947 proposal reveals that even the proponents of such regulation did not deem it appropriate to establish federal rules to govern affiliation decisions.

(2) In 1959, Congress enacted the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq.*,

("LMRDA") which established regulation of the type that had been considered but not enacted in 1947; the LMRDA thus was "the first comprehensive regulation by Congress of the conduct of internal union affairs," *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 193 (1967). Even this "comprehensive regulation" did not purport to address the processes by which unions decide whether to reconfigure themselves; Congress left those processes to be worked out through union self government. And nothing in the LMRDA grants employees who are not union members any right to participate in the life of the union in any respect at all.

In enacting the LMRDA, the 1959 Congress took as a given—as had the 1947 Congress—the right of labor unions to prescribe membership eligibility requirements; Representative Landrum stated, "We do not seek in this legislation, in no way, no shape, no guise, to tell the labor unions of this country whom they shall admit to their unions. No part of this legislation attempts to do that." 2 LMRDA Leg. Hist. at 1649 (NLRB ed.).[23] *See also id.* (Rep. Griffin) (the bill "does not touch or deal in any way with the admission to, or retention of, membership in a union). Moreover, Congress also took it as a given that rights should be extended only to union members and not to nonmembers; Congress' "overriding objective [in the LMRDA] was to ensure that unions would be democratically governed, *and responsive to the will of the union membership. . .*" *Finnegan v. Leu, supra*, 456 U.S. at 441 (emphasis added), and that "union members and not outsiders control the affairs of the unions." *Steelworkers v. Sadlowski, supra*, 457 U.S. at 116.

That theory permeates the various provisions of the LMRDA. For example, Title I of the Act—which is entitled "Bill of Rights of *Members* of Labor Organiza-

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[23] The Legislative History of the Labor Management Reporting and Disclosure Act of 1959 (NLRB ed.) is referred to throughout as "LMRDA Leg. Hist.".

tions—grants a series of rights to union members, including the following:

> Sec. 101(a)(1)—Every *member of a labor organization* shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberating and voting upon the business of such meetings . . .
>
> Sec. 101(a)(2)—*Every member of any labor organization* shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting . . . [29 U.S.C. § 411(a)(1), (a)(2) (emphasis added).]

Senator McClellan, the author of the original version of Title I, explained that his purpose was to "plac[e] the ultimate power in the hands of the members, where it rightfully belongs, so that they may be ruled by their free consent. . . . The union must be returned to their members, to whom they rightfully belong." 2 LMRDA Leg. Hist. at 1099. Senator McClellan added:

> If we want fewer laws—and want to need fewer laws providing regulation in this field—we should start with the basic things. We should give union members their inherent constitutional rights, and we should make those rights apply to union membership as well as to other affairs of life. We should protect the union members in those rights. By so doing we will be giving them the tools they can use themselves. That is all I propose to do by this amendment. [2 *id.* 1103.]

Similarly, Title IV of the Act, which regulates union elections, grants rights only to union members. That Title requires unions to conduct elections "*among the members in good standing*," provides that in such elections "*every member in good standing* shall be eligible to be a candi-

date and to hold office (subject . . . to reasonable qualifications uniformly imposed)," and states that "each *member in good standing* shall be entitled to one vote." LMRDA § 401(a), (b), (e), 29 U.S.C. § 481(a), (b), (e). The Senate Labor Committee, which authored this Title of the bill, stated its rationale as follows:

> It needs no argument to demonstrate the importance of free and democratic union elections . . . The responsiveness of union officers *to the will of the members* depends upon the frequency of elections and an honest count of the ballots. [S. Rep. No. 187, 86th Cong., 1st Sess. at 20 (1959), *reprinted in* 1 LMRDA Leg. Hist. at 416 (emphasis added).]

What was in controversy in 1958-59, when the LMRDA was being developed, was how extensively to regulate unions; the precise reach of that Act is the result of careful congressional consideration in which all sides in the debate shared the view that whatever regulation was enacted should be so crafted as to grant rights to union members only and not to nonmembers.

The most pertinent examples here are the proposals that would have gone beyond the requirements concerning the approval of dues increases and the election of officers stated in § 101(a) and in Title IV to create a more general set of federal rules governing changes in union rules. For example, when the Kennedy-Ives bill, S. 3974 85th Cong., 2nd Sess., the precursor to the LMRDA, was before the Senate in 1958, Senator Knowland proposed an amendment that would have required unions to establish an initiative and referendum process with respect to proposals to amend the union's constitution or to recall a union officer, 104 Cong. Rec. 11184; that amendment was defeated because the majority concluded that "[w]e ought not to undertake to dot every 'i' and cross the very last 't' for labor unions, *id.* at 11190 (Sen. Ervin). But despite the disagreement over the desirability of the Knowland amendment, it was com-

mon ground in the debate that only union members' rights were implicated by the proposal. Thus, the Knowland amendment would have required referenda "at which each member of [the] labor organization . . . shall be entitled to vote by secret ballot," *id.* at 11184; Senator Knowland explained that his purpose was to "provide[] that union members will have an opportunity to change or modify the constitution of their organization, so as to be sure they have control over those who really exercise the power" because "[t]here can be no disagreement that a union should be governed and directed according to the wishes of the majority of its members," *id.* at 11186, 11187. And opponents of the Knowland amendment argued against it on the ground that "sufficient protection [would be] provided union members in respect of their officers" by virtue of the election regulations, *id.* at 11190 (Sen. Ervin) and that "[i]f the members of a labor union decide to do without a law to change the constitution and bylaws they can do it," *id.* at 11194 (Sen. Purtell).[24]

Similarly, in 1959, Senator McClellan's bill, S. 1137, 86th Cong., 1st Sess., would have established more extensive regulation of union governance than that which ultimately was adopted in Title I, including, of particular note here, regulation of the procedures for effecting certain types of affiliations and mergers. Senator McClellan explained that the purpose of his bill was to "bring to the conduct of union affairs *and to union members* the reality of some of the freedom . . . that we enjoy as citizens by virtue of the Constitution of the United

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[24] Senator Knowland introduced a second amendment to the Kennedy-Ives bill which would have mandated that certain collective bargaining agreements be "ratified by a majority vote *of the members of the labor organization* in the unit covered by the contract," 104 Cong. Rec. at 11461; that amendment was defeated as unduly intrusive into union affairs and thus inconsistent with the principle of "giving the unions the right to govern themselves, under the broad safeguarding provisions" of the bill, *id.* at 11462 (Sen. Morse).

States." 2 LMRDA Leg. Hist. at 1098. In accordance with that purpose, the McClellan bill extended rights to union members alone; for example, the provision of that bill that would have applied to votes on certain affiliations provided as follows:

> Sec. 102.—The constitution and bylaws or other governing charter of every labor organization shall contain provisions effectively designed to carry out the following objectives *and to guarantee to its members the following rights*:
>
> * * *
>
> (5) AFFILIATED ORGANIZATIONS—No organization or fund, whether or not incorporated, shall be created or financed by the funds of a labor organization except by the general vote of the labor organization. . . [1 LMRDA Leg. Hist. at 271-72.]

And the McClellan bill provision on mergers likewise provided:

> Sec. 103.—The constitution and bylaws or other governing charter of every local labor organization shall contain provisions effectively designed to carry out the following objectives *and to guarantee to its members* the following rights:
>
> * * *
>
> (4) MERGERS OF LOCALS OR TRANSFER OF MEMBERSHIP OR FUNDS.—No merger of a local labor organization with any other local labor organization, and no transfer of membership or funds from one local labor organization to another shall take place except after approval by a general vote of each local labor organization (in the case of a merger), each local labor organization affected (in the case of a transfer of membership), and the local labor organization from which funds are to be transferred (in the case of a transfer of funds), upon due notice stating in detail the purpose of the merger or transfer. [1 LMRDA Leg. Hist. 276-77.]

Senator McClellan ultimately decided not to include these provisions in the "Bill of Rights" he proposed and which was adopted on the Senate floor. *See* 2 *id.* 1102.

C. This legislative history is significant for two reasons. First, it proves that the fact that the LMRDA does not regulate the procedures by which unions effectuate constitutional changes generally and affiliations and mergers particularly is the result of a carefully considered congressional decision concerning the appropriate reach of federal regulation of union decisionmaking. The Board in *Amoco IV* has thus decided to regulate processes Congress decided to leave unregulated by federal law.

Second, the LMRDA legislative history shows that the *Amoco IV* rule runs against the grain of the entire system of labor relations as established by the LMRA and the LMRDA. Under that system, while all employees have the right to participate in *choosing* a representative, representation rights at that point are vested only in the prevailing majority, thus limiting the right to govern the representative to those who choose to become full union members.[25] "Union membership allows the member a part in choosing [the union's] course of action," *Allis-Chalmers*, 388 U.S. at 191; "nonunion employees have no voice in the affairs of the union," *id.*[26] As the Board's counsel put it in oral argument just last Term, in urging

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[25] This principle reflects an accommodation of the principle of exclusive representation of all employees in the bargaining unit with the NLRA's policy of "voluntary unionism," *Pattern Makers v. NLRB, supra*, 53 L.W. at 4931.

[26] *See also Pattern Makers' League v. NLRB, supra*, 53 L.W. at 4931; *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 52 L.W. 5042, 5048 n.3 (July 2, 1984) (White, J., dissenting ("a non-member employee in a bargaining representative often has no say in who will serve as officers of the union that represents him since such decisions are generally made by union members only").

this Court to sustain the Board's rule permitting union members to resign at will:

> [T]hough the Board adheres fast to the right of a member to leave the Union . . . the Court must remember that this is not a costless option. The Union continues to be the mandatory bargaining representative of that worker, *and in choosing to resign, he loses his voice* and he loses his voice most particularly in regard to the question of whether he may participate in a vote to take that unit out on strike, and he loses his voice in deciding whether to accept a new contract—a new contract to end the strike. [Tr. of Oral Argument in No. 83-1894, Feb. 27, 1985, pp. 38-39.]

That was precisely Congress' understanding and the rule of *Amoco IV* is contrary to that understanding.

D. There is one further respect in which *Amoco IV* is inconsistent with congressional intent: that decision starts from a fundamental misconception of the role of the Labor Board as Congress delineated that role.

At the time the LMRDA was debated, one of the central issues in contention was whether to give the Labor Board a role in enforcing the rules that were being developed by using denial of access to the Board as a sanction to enforce the LMRDA's commands. Under §§ 9(f)-(h) of the LMRA, in order for a union to be able to file a representation petition or an unfair labor practice charge with the Labor Board, the union was required to have filed a public report detailing, *inter alia*, its decisionmaking procedures, its receipts and disbursements, its dues structure, and the compensation of its officers, and disclaiming any affiliation with the Communist Party. During the course of the debates over the LMRDA, several proposals were made—including one by the Eisenhower Administration, *see* S. 748, 86th Cong., 1st Sess. §§ 202(c), 210(a), 1 LMRDA Leg. Hist. 95-96, 210-11—to extend that approach to require compliance with the

new requirements being legislated as a condition of access to the Labor Board.

In enacting the LMRDA, Congress rejected such proposals and provided for judicial enforcement of that Act either through private suits, *see* 29 U.S.C. § 412, or, in the case of Title IV, through suits filed by the Secretary of Labor, *id.* § 482. Indeed, in § 201(d) of the LMRDA Congress repealed §§ 9(f)-(h) of the LMRA. The Senate Committee explained why it viewed Labor Board sanctions as inappropriate to enforce the LMRDA:

> First, it would be ineffective in the case of strong unions not dependent upon NLRB facilities; second, it is unfair to the members who have done no wrong but who would suffer both the denial of information and the loss of NLRB protection; third, the rights and duties created by the National Labor Relations Act exist for the benefit of the public, and such legal obligations should be enforced equally in all cases, not traded off against one another as a system of rewards and punishments; and, finally, experience . . . clearly demonstrates that conditioning the use of the NLRB processes on compliance with not wholly related requirements . . . can result in a frustration of the principal purpose of the Labor Management Relations Act, that is, settlement of labor disputes in an orderly, efficient, and expeditious manner. In short, the committee is convinced that such a procedure is costly, cumbersome, and of doubtful efficacy. [S. Rep. No. 187, *supra*, at 9, 1 LMRDA Leg. Hist. at 405]

Thus, in conditioning an affiliated union's right to obtain a bargaining order from the Board on the manner in which the union made the decision to affiliate, the Board has entered a realm Congress specifically decided the Board should not enter and has used its powers over representation matters in a way Congress specifically decided those powers should not be used.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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Nos. 84-1493 and 84-1509

In the Supreme Court of the United States

OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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1. The Union contends that the two parts of the *Amoco IV* rule—unit-wide vote and continuity—rest on mutually inconsistent premises (Resp. Br. 29).[1] Specifically, the

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[1]Preliminarily, the Union contends (Resp. Br. 15-17) that, since the *Amoco IV* rule represents an allegedly radical change in a policy that was settled for many years and since its validity implicates the agency's statutory authority, the Board's decision is not entitled to the deference from the reviewing court which it would normally receive. There is no

Union argues that, while the Board justifies the need for a unit-wide vote on the ground that union affiliation decisions "involve 'the selection of a bargaining representative,' " the Board simultaneously recognizes in its continuity requirement that "an affiliation—like the other evolutionary changes unions continuously effect—does *not* ordinarily raise a question of representation" (*ibid.*; emphasis in original). This argument misconceives the purpose of *Amoco IV's* unit-wide vote requirement and its relation to the continuity requirement.

As explained in our opening brief (at 14-16 & n.10), the Board, in the interest of avoiding an unnecessary disruption of stable bargaining relationships, has recognized that

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merit to this contention. First, as shown in our opening brief (at 19-21), the Board's treatment of changes in union structure and organization has been anything but settled. *United Retail Workers Union Local 881* v. *NLRB*, No. 84-2000 (7th Cir. Oct. 1, 1985), slip op. 19. Rather, it has been one where " 'the Board has more or less felt its way * * * and has modified and reformed its standards on the basis of accumulating experience.' " *NLRB* v. *Weingarten, Inc.*, 420 U.S. 251, 265 (1975), (quoting *Electrical Workers* v. *NLRB*, 366 U.S. 667, 674 (1961)). Second, "[a]n administrative agency is not disqualified from changing its mind; and when it does, the courts still sit in review of the administrative decision and should not approach the statutory construction issue *de novo* and without regard to the administrative understanding of the statutes." *NLRB* v. *Iron Workers*, 434 U.S. 335, 351 (1978). Accord: *NLRB* v. *Action Automotive, Inc.*, No. 83-1416 (Feb. 19, 1985), slip op. 4 n.4. Nor does an exception to the normal standard of review of Board interpretations of the National Labor Relations Act exist for so-called jurisdictional or statutory authority questions. See *NLRB* v. *City Disposal Systems, Inc.*, No. 82-960 (Mar. 21, 1984), slip op. 6-7 n.7. The function of the reviewing court in this case was merely to determine whether the Board's *Amoco IV* rule was a reasonable implementation of the Act's policies, and, if it was, the court was required to uphold the rule even though a different rule would have been equally reasonable. See *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *NLRB* v. *Truck Drivers Union*, 353 U.S. 87, 96 (1957); *Pattern Makers' League* v. *NLRB*, No. 83-1894 (June 27, 1985), slip op. 2 (White, J., concurring).

many changes in union organization and structure, including many affiliations, do not create an entirely new entity and therefore do not raise a question concerning representation that must be resolved through the Board's formal election procedures.[2] But, as also shown in our opening brief (at 22-23), even where an affiliation does not create a completely new entity and thus raise a question concerning representation, the resulting changes can still significantly affect the union's representation of the entire bargaining unit. If the Board were to amend the designation of the employees' bargaining representative to reflect the affiliation, it would thereby cloak the affiliated union with exclusive authority to represent the entire bargaining unit and with the full panoply of rights and protections that flow from that status (see NLRB Br. 13-14 n. 6, 18-19 n. 12).[3] The *Amoco IV* requirement of a unit-wide vote on the affiliation is a reasonable means of satisfying the Board—before it substitutes the newly affiliated union for the old union as the employees' statutory representative—that all of the employees whose representation could be affected by the changes caused by the affiliation had an opportunity to vote on it under procedures that at least minimally approximate those used when employees make their initial choice of a representative.[4]

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[2]Thus, to the extent that the Union argues (Resp. Br. 20-24 & n. 12) that a union, during its tenure as bargaining representative, is likely to go through a process of evolutionary change and not every change is sufficient to put in doubt the union's continued majority status, we agree.

[3]Contrary to the Union's view (Resp. Br. 33), the Board places its imprimatur on the affiliation decision when it issues a bargaining order in favor of the affiliated union no less than when it amends an outstanding certification in its favor.

[4]It is possible that, even after a majority of the unit employees have approved the affiliation in a union-conducted vote, the Board would nonetheless call a formal unit-wide representation election if it found that the post-affiliation union was substantially different from the

A union organizational change such as an affiliation differs from other decisions which also may affect the bargaining unit in that the latter do not call for the Board to change the designation of the statutory representative for the unit. As the Seventh Circuit stated in *United Retail Workers Union Local 881* v. *NLRB,* No. 84-2000 (Oct. 1, 1985), slip. op. 20, in sustaining the *Amoco IV* rule as applied to a union merger:[5]

> [A] merger affects the relationship between a union and its members in much the same way as contract ratifications and elections of union officers. In one crucial aspect, however, a merger election differs from the other internal union affairs: Its effects are not limited to the relationship between a union and its members. Instead, it has external ramifications. For example, after an affiliation or merger, a union inevitably seeks an amendment to its certification, as in *Amoco,* or files unfair labor practice charges with the Board, as in the present case. Thus, because petitioner

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pre-affiliation union. But, where there is a lack of continuity, a Board-conducted election is not simply another method of determining whether a majority of the unit employees want to be represented by the new entity. Rather, the situation is comparable to an initial recognition situation wherein the employer—even though it may have no reason for doubting the union's majority status—is entitled to have the representation question determined in a Board-conducted election, in which it will have an opportunity to express its views to the employees. See NLRB Br. 27-28.

Contrary to the Union's assumption (Resp. Br. 24), the Board, having found that the unit-wide vote required by *Amoco IV* was not held, dismissed the Union's petition to amend the certification without reaching the further question whether there was sufficient similarity between the old and newly affiliated union so that the latter could be deemed a continuation of the former (Pet. App. 47a, 51a-52a).

[5]The Seventh Circuit thus joins the Fifth Circuit, which had previously approved the *Amoco IV* rule. *Local No. 4-14, Oil Workers Int'l Union* v. *NLRB,* 721 F.2d 150 (5th Cir. 1983).

invoked the external authority of the Board in an attempt to establish that the employer had committed an unfair labor practice, the Board could rationally require an additional indicium of unit-wide majority support for the merger, while avoiding the imposition of the entire set of procedures required in a Board-conducted election. The additional indicium that *Amoco* requires is that all unit employees have the opportunity to vote.

2. The Union is on no firmer ground in contending (Resp. Br. 35-36) that the *Amoco IV* rule runs counter to the Act's policy of promoting stable bargaining relationships. As pointed out in our opening brief (at 28-29), the requirement that all unit employees have an opportunity to participate in the vote on affiliation minimizes the potential for disruption. Since employee views will be obtained before the affiliation is irreversibly consummated, the union can base its decision on these views: if the vote is against affiliation, it can retain its independent status and its certification, while if the vote is in favor of affiliation, it can proceed with confidence that, even if the Board should later decide that a lack of continuity requires a Board-supervised election, it is likely to prevail in that election. In contrast, under the procedure required by the court below and favored by the Union, the union's affiliation may result in decertification, and the loss of the privileges of certified status, if the Board determines—after the affiliation has occurred—that lack of continuity has raised a question concerning representation requiring a Board-run election, and the union loses that election.

Moreover, as the Seventh Circuit noted in *United Retail Workers Union Local 881,* slip op. 25, "the *Amoco [IV]* rule should result in a decrease in the amount of litigation on merger issues." For, "[u]nder *Amoco,* a union is certain to include all unit employees in a merger vote. If the vote

carries, employers faced with certain majority support for the post-merger organization might be dissuaded from further contesting the validity of the merger." The same result could be expected from application of the *Amoco IV* rule to affiliations.

3. The Union errs in asserting that the *Amoco IV* rule impermissibly interferes in internal union affairs and "compel[s] unions to grant nonmembers the right to participate in the union's affiliation decision-making process" (Resp. Br. 24, 36-38). The rule does not require a union to allow nonmembers to participate in its internal decision to affiliate; it only requires the union to conduct a referendum open to all bargaining unit employees, both union members and nonmembers, if that internal decision is to serve as a basis for Board certification that the newly affiliated union is entitled to continued recognition as a statutory bargaining representative for the unit.[6] To be sure, some unions

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[6]In support of its contention that affiliation decisions are solely internal union matters, unrelated to representation issues, the Union asserts (Resp. Br. 29-30 n.16) that where, unlike the instant case, a union represents more than one bargaining unit, it "is a logical impossibility" for the union's internal affiliation vote to indicate separately the employees' sentiments in each unit, and that "the Board has rejected the proposition that [in such situations] affiliation votes must be conducted unit-by-unit." Neither contention is correct. First, as shown above, the decision of a union and its members to affiliate is separate from the question whether that decision may serve as a basis for Board amendment of the designation of the representative for a particular bargaining unit. If a union representing several bargaining units chooses to affiliate, the newly affiliated organization simply will not be entitled to recognition as the certified bargaining representative in units that fail to approve that step. Second, the union misapprehends Board policy, relying solely on *William B. Tanner Co.*, 212 N.L.R.B. 566 (1974). That case, however, was denied enforcement precisely because there was no substantial evidence to support a finding that the newly merged union "is the authorized representative of the employees in the appropriate unit" 517 F.2d 982, 983 (6th Cir. 1975)). Cases decided under *Amoco IV* follow not *Tanner*, but *Safway Steel Scaffolds Co.*, 173 N.L.R.B.

have allowed nonmembers to vote in their internal affiliation or merger elections as a means of allowing the entire bargaining unit an opportunity to pass on the change in its statutory representative (see cases cited at NLRB Br. 25). But this procedure is not required by *Amoco IV*, and other unions have followed a two-step procedure of an internal, members-only vote followed by a unit-wide vote open to both members and nonmembers (see cases cited at NLRB Br. 25). Thus, the *Amoco IV* rule is not focused on any internal union matter but merely establishes the conditions that a newly affiliated or merged organization must fulfill in order to succeed to the status of statutory bargaining representative enjoyed by its predecessor organization.[7]

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311 (1968)—the leading pre-*Tanner* decision requiring unit-by-unit determination of employee consent in merger and affiliation cases. *Safway Steel Scaffolds Co.* formed the basis for the dissent from the Board's *Tanner* decision and the court's refusal to enforce it. See *F.W. Woolworth Co.*, 268 N.L.R.B. 805, 806 n.5 (1984), petition for review pending *sub nom. United Food & Commercial Workers Local 568* v. *NLRB*, No. 84-1243 (D.C.Cir.); cf. *May Dep't Stores Co.*, 268 N.L.R.B. 979, 980 n.3 (1984), aff'd *sub nom. United Retail Workers Union Local 881* v. *NLRB*, No. 84-2000 (7th Cir. Oct. 1, 1985) (noting, in upholding the Board's refusal to require an employer to bargain with a newly merged union, that there was no way to determine how the employees in the separate bargaining units had voted in the election approving the merger); *Amoco Production Co. (Amoco IV)*, 262 N.L.R.B. 1240, 1241 (1982) (emphasizing that "all unit employees" must be afforded the opportunity to vote on the affiliation).

[7]Nor is the union aided by the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401 *et seq.* That statute expressly provides that none of the provisions here relied upon by the Union (Resp. Br. 40-48) "shall * * * be construed * * * to impair or otherwise affect the rights of any person under the National Labor Relations Act" (29 U.S.C. 523(b)), and further states that "[e]xcept as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization * * * under any other Federal law * * *"(29 U.S.C. 523(a)). Because, as we have shown, the *Amoco IV* requirement of a unit-wide vote on affiliations or other

For these reasons, as well as those set forth in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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OCTOBER 1985

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similar union organizational changes is a valid exercise of the Board's authority under the National Labor Relations Act, it does not violate the policy against interference in internal union affairs embodied in the LMRDA. See also *Scofield* v. *NLRB*, 394 U.S. 423, 430 (1969); *Pattern Makers' League* v. *NLRB*, slip op. 9-10.

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Nos. 84-1493 and 84-1509

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents,
and
SEATTLE-FIRST NATIONAL BANK,
Petitioner,
v.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF FOR PETITIONER SEATTLE-FIRST NATIONAL BANK

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REPLY BRIEF FOR PETITIONER SEATTLE-FIRST NATIONAL BANK

Petitioner Seattle-First National Bank submits this Reply Brief in response to the Brief for Respondent Financial Institution Employees of America, Local 1182.

ARGUMENT

The union's brief gives scant attention to the right of free choice that underlies the rule announced in *Amoco Production Co.* (*Amoco IV*), 262 N.L.R.B. 1240 (1982), *aff'd sub nom. Local 4-14, OCAW v. NLRB*, 721 F.2d 150 (5th Cir. 1983). This oversight typifies the union's approach to affiliation issues. The International throughout this proceeding has evidenced concern solely for its institutional interest in expanding to include bargaining units previously represented by unaffiliated unions. The International has every right to advance that interest. It should not, however, be permitted to do so by sacrificing the statutory right of all employees, whether union members or not, to participate in the designation of their bargaining representative.

The rule applied by the Board here prevents that sacrifice, assuring that all employees will have a voice in the transfer of exclusive bargaining rights from the entity they have designated to a new affiliate of a large international union. The rule complements the Board's continuity test in a manner designed to maximize both employee free choice and stability in collective bargaining relationships. At the same time, the *Amoco* rule preserves a union's right to control its internal affairs by leaving the actual affiliation decision within the hands of the union itself. The Board's delicate balance of these considerations lies well within the scope of its administrative expertise. Adopted in the context of more frequent use of the affiliation tool by unions, and the product of years of debate among Board members, the *Amoco* rule is entitled to considerable deference.

I. THE *AMOCO* RULE IS ENTITLED TO DEFERENCE

Asserting that the Board's decision in *Amoco IV* altered a rule that "was settled for many years," [1] Local

[1] Of course, the union claims no reliance on Board precedent approving its actions. The employer repeatedly advised the Inde-

1182 argues that the Court in this case should show only minimal deference to the Board's administrative expertise. Union Br., pp. 15-16. A review of Board precedent, however, reveals that the Board's thinking on this issue has never been static, but has generally evolved toward greater protection of employee rights in connection with affiliations. Thus, as the Seventh Circuit observed in sustaining the *Amoco* rule, "the Board's approach to the affiliation issue has been anything but settled." *United Retail Workers, Local 881 v. NLRB*, 120 L.R.R.M. 2729, 2736 (7th Cir. Oct. 1, 1985).

The question presented in this case has prompted debate and division among Board members since the issue was first raised in 1963. Although a majority of the Board for several years agreed with the position advocated by the union, dissenting views were regularly and forcefully expressed. *See* Employer Br., pp. 18-19. Indeed, some members argued that the Board should not accept informal votes at all as the premise for transferring certifications from independent unions to newly-affiliated entities, believing that such changes should be accomplished in Board-conducted elections in which all employees could participate. *See Hamilton Tool Co.*, 190 N.L.R.B. 571, 576 (1971) (Chairman Miller, concurring); *Mosler Safe Co.*, 210 N.L.R.B. 934, 935 n.6 (1974) (footnote by Member Penello).[2] Against the backdrop of

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pendent that an exclusion of nonmember employees would directly violate then-existing Board precedent. *See* Employer Br., p. 6. The employer also advised unit employees that they were entitled to vote, regardless of union membership. R. 251 (J.A. 48). Unlike the union, employees might have relied upon existing Board law in declining to join the Independent in order to secure a voice in the representation decision.

[2] These views, when combined with Member Jenkins' dissent in *North Electric Co.*, 165 N.L.R.B. 942, 944 (1967) (Members Jenkins and Zagoria, dissenting), indicate that by 1974, a majority of the Board believed that all employees should have an opportunity to express their views on a transfer of certification from an inde-

this debate, the Board continued to develop its due process test to assure that recognition of a new affiliate's representative status did not fly in the face of employee sentiment. *See* Employer Br., pp. 17-18; Union Br., pp. 24-28.

The result of this dialogue was the *Amoco* rule, which, as Local 1182 observes, culminated the evolution of the Board's due process test. *See* Union Br., pp. 26, *et seq.*[3] The rule thus does not mark a departure from prior precedent, but represents the final step in the progress of administrative thinking. Not surprisingly, the Board has taken that step at a time when large unions have decided to make affiliations and mergers a cornerstone of their organizing efforts. *See* Employer Br., p. 38 & n.20. In these circumstances, the Court should, as it does in most such cases, defer to the Board's decision if it finds it rational and consistent with the National Labor Relations Act (the "Act"). *See NLRB v. Ensign Electric Division of Harvey Hubble, Inc.*, 767 F.2d 1100, 1102-03 & n.1 (4th Cir. 1985) (deferring to Board decision relying upon "an earlier viewpoint expressed in dissent"),

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pendent to a newly-affiliated union. However, Chairman Miller left the Board in December of 1974. The third member of the majority in *Jasper Seating Co.*, 231 N.L.R.B. 1025 (1977), Member Walther, joined the Board in November of 1975.

[3] Although accurately portraying an evolution in Board doctrine, the union's discussion of early Board cases incorrectly suggests that the Board initially confined its review of affiliations to continuity questions. The Board from the beginning examined both employee consent and continuity, though the inquiries were not neatly bifurcated and the examination of consent was too limited in scope. *See, e.g., Harris-Woodson Co.*, 85 N.L.R.B. 1215, 1216-17 (1949), *enf'd*, 179 F.2d 720, 722 (4th Cir. 1950); *American-Hawaiian Steamship Co.*, 10 N.L.R.B. 1355, 1361-62 (1939). Nearly 20 years ago, the Board recognized the distinct nature of the two issues and began conducting both a continuity test and an explicit due process inquiry designed to assure that the change in representative reflected a majority view. *See, e.g., North Electric Co.*, 165 N.L.R.B. 942 (1967). Even prior to that bifurcation, however, no Board decision recognized the exclusive representative status of a new affiliate without examining indicia of consent.

citing *Local 900, International Union of Electrical Workers v. NLRB*, 727 F.2d 1184, 1189 (D.C. Cir. 1984).

Nor should the Court's deference to the Board's expertise be diminished on the ground that "Board's very authority to act . . . is at issue." Union Br., p. 16. The Board has the power—indeed, the duty—to determine whether a union has been freely selected by a majority of employees in a bargaining unit. That is all the Board purported to do when Local 1182 presented its request for an amended certification.[4] It did not consider the impact upon the union's internal affairs of the decision to exclude nonmember union employees from the affiliation decision. Instead, the Board decided whether it should grant the new affiliate governmental recognition as the exclusive bargaining representative for all employees of Seattle-First National Bank. That determination lies well within the bounds of the Board's authority.

II. THE *AMOCO RULE* IS NECESSARY TO PROTECT EMPLOYEES' FULL FREEDOM TO DESIGNATE THEIR EXCLUSIVE BARGAINING REPRESENTATIVE

Like the court below, the union asserts that the right of employees to select their exclusive bargaining representative is fully protected after an affiliation provided

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[4] Although the Act does not mention amended certifications, the Board has decided to permit amendments in some circumstances. If the Board has that power, as all parties here agree, it must *a fortiori* have the power to assure that the amendments it grants do not undermine "the fair and free choice of bargaining representatives by employees." *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). According to the union, however, the issue is whether the Board has authority to regulate internal union affairs. Union Br., p. 16. This approach begs the question by presupposing that the new affiliate's representative status is an internal union matter. *See United Retail Workers, Local 881 v. NLRB*, 120 L.R.R.M. at 2737 (describing identical "presupposition"). This erroneous assumption pervades the union's brief.

the Board satisfies itself that no substantial change in the representative has been accomplished. Union Br., pp. 19-24. Indeed, the union claims that this requirement of continuity is logically incompatible with the *Amoco* requirement of unit-wide consent. Union Br., pp. 28-31. However, these arguments depend upon a fundamental misperception of Board doctrine.

A. The Continuity Inquiry Standing Alone Does Not Adequately Protect Employees' Full Freedom to Select Their Bargaining Representative.

The union acknowledges that the Independent's affiliation here effected a change in the bargaining representative chosen by the Bank's employees. *See* Union Br., pp. 22-23 (discussing affiliation as "transformation," "evolution" and "change"). The *fact* of change thus is not at issue when a union petitions for a post-affiliation amended certification. Rather, the Board must consider the *significance* of the requested change from the previously certified entity to the new affiliate. A finding of continuity therefore does not represent a determination that the two entities are precisely the same, but reflects the Board's conclusion that the changes effected by affiliation are, in its view, "insubstantial." *See* Cert. App. 20a.

Whether substantial or not, the changes that result from an affiliation relate to the union's identity[5] and,

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[5] In arguing that the Independent's identity was not affected by the affiliation, the union makes an interesting, but logically flawed, analogy to the westward expansion of the United States. Union Br., pp. 20-21 n.12. The union may be correct in observing that our nation retained its identity as it grew. But the identity of entities assimilated through the expansion of the United States, such as the Republic of Texas, clearly changed through their transformation from independent status to statehood. Moreover, the union's analogy is inapposite for a more fundamental reason. As they became states, newly assimilated territories retained substantial elements of their inherent sovereignty. *See United States v.*

hence, its entitlement to assume the exclusive representative status enjoyed by its predecessor. This explains why the Board has always engaged in a post-affiliation examination of continuity, an inquiry that neither the union nor the court below has questioned. This represents a significant concession, for the continuity test is justified solely by the fact that an affiliation is an external change different in nature from the more common internal union changes discussed by Local 1182. *See* Union Br., p. 22. In contrast, the Board has never examined continuity after elections of union officers, modifications of union policy, amendments to union bylaws, or similar actions, because these events concern only the manner in which the entity selected by unit employees exercises the bargaining rights delegated by those employees. Unlike an affiliation, they do not speak to the very identity of the chosen representative.

In deciding whether a particular affiliation undermines continuity of representation, Board members necessarily exercise their subjective judgment. Not surprisingly, differences of opinion have arisen. In the 1970's, for example, two members of the Board advocated the proposition that an affiliation of an independent union with a large international union *ipso facto* results in a

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Wheeler, 435 U.S. 313, 320 (1978) (states' power inheres in sovereignty, rather than deriving from federal government). In contrast, new local unions have only those powers granted to them by their International, much like a municipality, which has only "such power [as] has been granted by the State . . ." *Wheeler*, 435 U.S. at 321. *See* Leisersen, *American Trade Union Democracy* (1959) 280 ("As municipalities are subject to the constitutions and laws of the states, so the locals are subject to the constitutions and laws of the national unions of which they are subordinate branches; and, as some states grant more home rule to their cities than others, so some national unions grant more home rule to their local unions than others do.") In this case, for example, Local 1182's very power to enact its bylaws came not from inherent autonomous authority, but from a "grant" of power from the International. Ex. P-29, Preface; Ex. E-1, § 24(A) (J.A. 146).

significant change of the bargaining representative. *Jasper Seating Co.*, 231 N.L.R.B. 1025, 1027 (1977) (Member Penello, concurring); *Hamilton Tool Co.*, 190 N.L.R.B. at 576 (Chairman Miller, concurring). *See also Ocean Systems, Inc.*, 223 N.L.R.B. 857, 862 (1976) (Member Walther, dissenting), *enf'd sub nom. J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850 (5th Cir.), *cert. denied*, 439 U.S. 893 (1978). The Third Circuit Court of Appeals has agreed with this assessment, *see, e.g., Sun Oil Co. of Pennsylvania v. NLRB*, 576 F.2d 553 (3d Cir. 1978), as has at least one commentator. R. Williams, *NLRB Regulation of Union Bargaining Rights When Affiliation Changes* (U. Pa. 1982) at 31. Others have rejected this view.

This case, in its present posture, does not call for a resolution of the conflicting approaches to continuity.[6]

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[6] It is nevertheless worth noting that the affiliation of the Independent to the International resulted in precisely the changes that have troubled the Third Circuit and certain Board members. *See Sun Oil Co. of Pennsylvania*, 576 F.2d at 557. *Cf.* Union Br., p. 24. For example, Section 24(A) of the RCIU Constitution permitted locals, such as Local 1182, to adopt bylaws only if consistent with the International Constitution and approved by the International. *See* Tr. 167, 220 (J.A. 29, 41). The International had power to place Local 1182 in trusteeship at the discretion of the International President, suspending Local 1182's autonomy. Ex. E-1, §§ 9(K)(1), 9(K)(2)(e) (J.A. 115, 117). With respect to strikes, the International Constitution provided that "[n]o Local Union shall engage in a strike or other economic measures without first receiving the authorization of the International President and otherwise complying with" provisions of the constitution. Ex. E-1, § 32(E)(1) (J.A. 170). The International also reserved the right to approve or disapprove the terms of Local 1182's proposed collective bargaining agreements. Ex. E-1, §§ 32(A), 32(B), 32(D)(2) (J.A. 167-68). Furthermore, the International could order Local 1182 to cease any activities deemed inimical to "the best interests of the International Union. . . ." Ex. E-1, § 9(M) (J.A. 121). The International's authority even extended to day-to-day business matters, including forms and supplies used by Local 1182, Ex. E-1, § 29(C) (J.A. 159), and the Local's bookkeeping system, § 26(G)(2) (J.A. 152).

See Employer Br., p. 17 n.4. The mere existence of these differing views, however, demonstrates that no bright line distinguishes significant from insubstantial changes in the certified entity. Changes that appear minor to one person might be deemed substantial by another. Given that fact, the union's plea for exclusive reliance upon the Board's subjective continuity determination is necessarily flawed. Congress conferred upon employees, not the Board, the power to distinguish among those who seek to act as their representatives. Accordingly, employees must be afforded the opportunity to assess the significance of changes in their certified bargaining agent. Any other approach pays mere lip-service to employees' "full freedom" to designate their representatives, Section 1 of the Act, 29 U.S.C. § 151, replacing it with a paternalistic approach that grants the Board alone power to evaluate an affiliation's probable impact on employee support.

Furthermore, by suggesting that the Board be confined to its continuity test, the union essentially asks that the due process inquiry be abandoned *in toto*. Union Br., p. 29. Under the union's approach, a finding of continuity would preclude the Board from questioning an affiliation accomplished, for example, solely by action of a union's executive council, without any input from unit employees, so long as no schism within the union resulted.[7] *See* Union Br., p. 21 at n.12. In these circumstances, the union appears to argue, employees are appropriately presented with a *fait accompli*, relegated to

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[7] The practical consequences of the union's approach are illustrated by its disparaging reference, Union Br., p. 28, to the Board's decision in *Peco, Inc.*, 204 N.L.R.B. 1036 (1973). The Board in *Peco* denied an amended certification because two elections failed to satisfy the due process test. The first was held at a time when an entire shift of employees could not participate, while the second was affected by confusion as to whether it was the actual vote. 204 N.L.R.B. at 1038. The union's approach would authorize such flippant treatment of employees' right to choose their bargaining representative.

their right to file a decertification petition under Section 9(c) of the Act, 29 U.S.C. § 159(c), to undo what has been done in disregard of their wishes. *See* Employer Br., p. 21 n.6.

Limiting the Board to the continuity test would thus invite abuse of the certification amendment process, opening the door for unions that wish to impose their will upon reluctant bargaining units. Indeed, the consequences of barring an examination of due process are so repugnant to modern notions of democracy that even the court below rejected the union's invitation to eviscerate Board precedent on this issue. *See* Cert. App. 21a n.15. Because the continuity inquiry cannot protect against jeopardy of these democratic values, it cannot stand alone.

The Board's due process test, then, rationally complements its review of representational continuity, providing assurance that the new affiliate is not running roughshod over employees' desires. Once one acknowledges that the Board must examine due process, the Act furnishes no rational basis to deny the protection of that inquiry to nonunion represented employees. *See* Employer Br., p. 19. To the contrary, the Act protects *employee* freedom of choice, not freedom of choice of union members, and assures *all* employees that they have the right to choose their bargaining representative even if they decide not to join a union. *See* § 7 of the Act, 29 U.S.C. § 157.

B. The *Amoco* Rule Is Compatible with the Continuity Inquiry.

The inadequacy of the continuity test standing alone does not establish its incompatibility with the due process test, including *Amoco's* requirement of unit-wide consent. Cf. Union Br., p. 28, *et seq.* Far from being in conflict, the two inquiries interact to protect both stability and free choice. When a new affiliate is substantially

similar to the previous bargaining representative, *i.e.*, when continuity exists, the Board will not require a test of majority status through a Board-conducted election; however, reliable evidence of employee consent to the new bargaining representative must be provided. When, on the other hand, the affiliation creates a dramatically different entity, the integrity of the Board's certification demands selection of the bargaining representative through the "laboratory conditions" of a Board-supervised election, regardless of informal evidence of employee consent.

The Board thus protects employee freedom of choice by assuring that obviously major changes in the bargaining representative are accomplished only through "the carefully supervised and controlled procedures which apply" in Board proceedings, *Hamilton Tool Co.*, 190 N.L.R.B. at 576 (Chairman Miller, concurring), while accepting less drastic alterations based upon informal evidence of employee consent collected by the union itself. Employee consent properly remains the *sine qua non* of accepting informal proceedings at all. The Board's approach, by looking to both consent and continuity, appropriately accommodates the Act's dual goals of employee freedom of choice and stability.

III. THE *AMOCO* RULE ENHANCES STABILITY IN BARGAINING RELATIONSHIPS

Like the court below, Local 1182 claims that the *Amoco* rule will unnecessarily disrupt industrial stability. Union Br., pp. 34-36. However, the union alludes only to the consequences of a breach of the *Amoco* standard. It does not discuss the impact of the rule in situations in which unions choose to abide by the law, as the vast majority doubtless will. In those circumstances, the *Amoco* rule will likely enhance stability in bargaining relationships. *See* Employer Br., pp. 25-28 (discussing

decision below). As the Seventh Circuit recently observed in the context of a union merger:

> Under *Amoco*, a union is certain to include all unit employees in a merger vote. If the vote carries, employers faced with certain majority support for the post-merger organization might be dissuaded from further contesting the validity of the merger.

United Retail Workers, Local 881 v. NLRB, 120 L.R.R.M. at 2739. If the unit-wide vote does not carry, on the other hand, a union may choose to forego affiliation and thus maintain existing representation of the unit. If a union chooses to affiliate notwithstanding an absence of unit support, of course, disruption will occur. That disruption, however, will result not from the *Amoco* rule, but from employees' freely expressed rejection of the new affiliate's effort to speak on their behalf.

Because the *Amoco* rule simply requires that the union provide all unit employees with an opportunity to express their views on representation, it sets no trap for the unwary. Thus, bargaining rights will be suspended without employee consent only if a union flouts the law by muting the voice of nonunion employees. In such a situation, as here, one would logically question whether the union's conscious exclusion of some represented employees stemmed from its awareness of a lack of majority support or a desire to thwart full and free discussion of representation issues. Accordingly, a court should "hesitate to endorse the election of a union that has deliberately disenfranchised an entire group of otherwise eligible voters." *United Retail Workers, Local 881 v. NLRB*, 120 L.R.R.M. at 2738.

The noncomplying union's recourse is simple. It may, after soliciting expressions of interest from the bargaining unit, "compel a unit-wide, Board-conducted election with binding results." *Id.* at 2739. This provides relief precisely tailored to the union's violation of *Amoco*: a

vote in which those employees barred from the initial decision would be entitled to participate.[8] That election will, in the long run, enhance stability, for industrial strife can be minimized only through a guarantee of employees' "full freedom" to designate their bargaining representative. *Mastro Plastics v. NLRB*, 350 U.S. 270, 280 (1956).

IV. THE *AMOCO* RULE NEITHER INTRUDES UPON INTERNAL UNION AFFAIRS NOR CONTRAVENES CONGRESSIONAL INTENT

Finally, the union argues that the *Amoco's* rule improperly intrudes upon internal union affairs, in contravention of Congressional intent. Union Br., pp. 36-48. In fact, however, the rule does not purport to govern the union's internal decision to affiliate. Rather, it addresses the exclusive representative status of the new affiliate, a matter entirely external to the union's power as a voluntary association of dues paying members. *See United Retail Workers, Local 881 v. NLRB*, 120 L.R.R.M. at 2737. *See also* Employer Br., p. 31.

The only consequence of the *Amoco* rule is that nonmembers may express their views as to the new affiliate's desire to be their exclusive bargaining representative. No one suggests that nonunion employees must have a voice on the question of affiliation *per se*.[9] As Judge

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[8] This approach makes far more sense than imposing the union willy-nilly upon employees, subject to their right to initiate the complex decertification process. *See* discussion, *supra* at pp. 9-10.

[9] The union mischaracterizes the vote required by the *Amoco* rule, suggesting that nonunion employees may "decide whether they prefer the union to be affiliated with another entity or to be unaffiliated." Union Br., p. 30. However, under *Amoco*, nonunion employees must be given an opportunity to vote only on the exclusive representative status of the new affiliate. As both the employer and the Board have pointed out, a union may comply with *Amoco* without permitting nonmember participation in the actual affiliation decision. *See* Employer Br., p. 28; NLRB Br., p. 25. By declining to acknowl-

Wright noted in dissenting below, "nonmembers may not force affiliation because the decision to hold an affiliation election remains the province of the union." Cert. App. 26a. Nor may nonmembers block an affiliation, for the union has the right to decide as an internal matter to affiliate despite the absence of majority support within the unit. The lack of employee support would simply prevent the new affiliate from acting as the exclusive representative for the unit, in accordance with Section 9(a) of the Act, 29 U.S.C. § 159(a).

Thus, whether or not unit employees choose to acquiesce in representation by the new affiliate, a union has exclusive control over the manner in which it will resolve the internal affiliation question. *See* Employer Br., p. 28 n.11; NLRB Br., p. 25. In many cases, such as when there is 100% union membership within the represented unit, a vote of union members will correspond to the franchise mandated by *Amoco*. In other cases, the union may decide to hold a separate vote on transfer of certification after membership approval of the affiliation. Still another alternative would be a unit vote on representation preceding the membership election, with a favorable result contingent upon union members' approval of the affiliation. And some unions may simply choose to allow all unit employees to vote on the affiliation itself, regardless of membership.

The availability of these options demonstrates that the *Amoco* rule does not "regulate processes Congress decided to leave unregulated by federal law." Union Br., p. 46. The only procedure that the Board purports to oversee is that by which an affiliated entity assumes the statutory representative status previously enjoyed

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edge the nature of the vote required by *Amoco*, the union studiously avoids dealing with the substantial similarity between an initial representation decision and the solicitation of consent required by *Amoco*. *Cf.* Union Br., p. 30.

by an unaffiliated entity.[10] The union's lengthy discussion of the legislative history to the Labor Management Reporting and Disclosure Act ("LMRDA") contains no suggestion that Congress intended to prohibit the Board from examining the impact of an affiliation on the Board's certification of employees' exclusive bargaining representative. In considering the LMRDA, Congress did not concern itself with the statutory rights of non-union employees, but focused on the rights of union members to participate in union affairs. As one of the sponsors of that legislation observed, the LMRDA dealt with "union democracy," in contrast to the Act, which concerned "the rights of employees. . . ." 2 Leg. Hist. of the Labor Management Reporting and Disclosure Act of 1959 (NLRB ed.) at 1518 (remarks of Representative Landrum).

One must, then, look at the Act, which grants all employees certain rights, including the right to select their bargaining representative, that they do not lose simply because they decline to join a union.[11] *See Brown v.*

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[10] Here, the newly-affiliated union *asked* the Board to approve its exclusive representative status by filing a petition to amend the Board's certification. *See* Employer's Br., p. 30. No such imprimatur is requested after "a union election, a union constitutional amendment or any other union decision . . ." *See* Union Br., p. 33. The difference in treatment stems from the fact that only an affiliation alters the very entity chosen by employees and certified by the Board under the Act.

[11] The legislative history of the Act does not indicate that Congress contemplated the representational consequences of an affiliation election. However, in a colloquy with Senator Borah, United Mine Workers President John L. Lewis expressed the view that employees "certainly" have the right to choose representation by unions "that for reasons of their own have not seen fit to affiliate with the national movement." 1 Leg. Hist. of the National Labor Relations Act 1935 (NLRB ed.) at 180. Adoption of the union's position here would seriously impair that right by telling employees that their choice of an unaffiliated union becomes meaningless as soon as that union decides to affiliate. Here, of course, the Bank's

Hotel Employees, Local 54, 104 S. Ct. 3179, 3192-93 n.3 (1984) (White, J., dissenting). Nothing in the Act (or the LMRDA) deprives the Board of the power to protect those rights when it finds them jeopardized, or requires the Board to abandon protection of employees whenever a union labels its action "internal" in nature. To the contrary, the goal of protecting employee rights is paramount, even if it ostensibly restricts a union's right to self-governance. *Scofield v. NLRB*, 394 U.S. 423, 430 (1969). *See* Employer Br., pp. 33-35.

In light of these policies, the propriety of the *Amoco* rule cannot be doubted. The rule refrains from intruding upon a union's internal decisions, granting the union broad leeway to determine the means by which it effects affiliation and, in particular, permitting the union to exclude nonunion employees from the actual affiliation decision. The Board requires only one thing: that the unit as a whole be given an opportunity to consent before the new affiliate is granted governmental recognition as the exclusive representative of all employees, union and nonunion alike. This requirement poses no threat to internal union governance.

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employees in 1970 made a considered determination that they did not wish to be represented by an affiliate of a national body, but rather by an independent, home-grown union. *See* Employer's Br., p. 22 n.7.

CONCLUSION

For these reasons, the judgment and opinion of the United States Court of Appeals for the Ninth Circuit should be reversed. The Supplemental Decision and Order of the National Labor Relations Board should be reinstated.

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IN THE

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OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
V.
FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,
Respondents.

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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF AMICUS CURIAE THE LEGAL FOUNDATION OF AMERICA, SUPPORTING THE GRANT OF WRIT OF CERTIORARI

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BRIEF OF AMICUS CURIAE, THE LEGAL FOUNDATION OF AMERICA, URGING GRANT OF THE WRIT OF CERTIORARI

INTEREST OF AMICUS CURIAE

The Legal Foundation of America ("LFA") is a nonprofit corporation supporting the operations of a public interest law firm as that term is defined in IRS regulations. LFA is located on the campus of the South Texas College of Law in Houston

and shares certain personnel and activities with the law school. Its goals, among others, include the preservation of the market system of resource allocation, the attainment of a better balance between the federal government and the States, and the furtherance of individual political and economic liberties. In pursuit of its purpose to enhance the function of the market system, LFA has frequently appeared as amicus curiae in cases involving labor issues both in this Court and in lower courts. All litigation undertaken by LFA is approved by its Board of Trustees, which consists of attorneys, businesspeople and academics.

STATEMENT OF THE CASE

Amicus adopts the Statements of the Case made by Petitioner National Labor Relations Board and by Petitioner Seattle-First National Bank.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISION OF ANOTHER COURT OF APPEALS AND WITH PRIOR DECISIONS OF THIS COURT.

The decision of the Ninth Circuit in this case is in conflict with the decision of the Fifth Circuit in *Local Union No. 4-14 v. NLRB*, 721 F.2d 150 (5th Cir. 1983),[1] which upheld the NLRB rule at issue. Since it concerns the selection of a bargaining representative, which is one of the fundamental concerns of the National Labor Relations Act, and since it affects nationwide employers, the conflict is a significant one rather than minor or "tolerable."

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1 The Fifth Circuit found the NLRB rule to be within "the wide discretion of the Board to establish procedures in an affiliation election that will ensure the fair and free choice of the bargaining representative of all the employees." 721 F.2d at 153.

Further, the court's decision conflicts with this Court's established rule of deference to Board interpretations of the Act,[2] which applies unless the Board's interpretation is irrational[3] or inconsistent with the Act.[4]

II. THIS CASE PRESENTS IMPORTANT QUESTIONS OF FEDERAL LAW THAT SHOULD BE DECIDED BY THIS COURT, CONCERNING THE PROTECTION OF THE RIGHTS OF ALL EMPLOYEES UNDER THE NLRA.

The NLRA provides that the union is to represent all employees, whether members or not.[5] All employees surrender

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2 This Court emphasized this just last year in Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 104 S.Ct. 2778 (1984), when it stated:

> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations.

Id. at 2782 (footnote omitted).

3 This Court has consistently upheld Board decisions when the Board is not "irrational or arbitrary" and does not "exceed its powers or venture into an area barred by the statute," NLRB v. Erie Resistor Corp., 373 U.S. 221, 236 (1963), making it clear that the "judicial role is narrow" in such cases. Beth Israel Hospital v. NLRB, 437 U.S. 483, 501 (1978).

4 The Ninth Circuit compared the prior NLRB rule with the new rule and decided that the earlier rule was adequate, making it "irrational" to adopt the new rule. Financial Institute Employees, Local No. 1182 v. NLRB, 738 F.2d 1483, 1492-1493 (9th Cir. 1984). In doing so, the court substituted its judgment for that of the NLRB.

5 Section 7 provides that employees "shall have the right . . . to bargain collectively through representatives of their own choosing . . ." 29 U.S.C. sec. 157 (1973). Section 9(a) provides that these representatives which are "designated or selected . . . by the majority of the employees . . . shall be the exclusive representatives of all the employees . . ." 29 U.S.C. sec. 159(a) (1973).

their individual bargaining rights to this exclusive bargaining representative. For this reason, the NLRA also provides that the exclusive bargaining representative is to be chosen by all employees.[6] The decision of the court below would defeat this purpose by disenfranchising non-union employees when the representative changes.[7]

A. The decision below allows the certification of a union that is not acceptable to a majority of employees.

The decision below enables unions to obtain certification of bargaining representatives that could not otherwise be elected, by initially electing a representative acceptable to the majority of employees and then affiliating on the basis of a minority vote, restricted to union members only. Although the Board may prevent this result in its certification decision,[8] such situations have occurred[9] and, under the approach approved by the lower court, are likely to occur in the future. For example, in *North Electric Company*, 165 N.L.R.B. 942, 943 (1967), the NLRB actually certified a representative, after a union-only election, that all employees had rejected by majority vote just fifteen months earlier.

This "minority rule" effect can also be seen in the vote in the instant case. As the dissent points out, with only union members participating in the vote, the affiliation decision was made on the basis of an affirmative vote of 1206 member employees out of a bargaining unit of about 4800 employees, or

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6 Id.

7 738 F.2d at 1493.

8 In Bedford Gear & Machine Products, Inc., 150 N.L.R.B. 1 (1964), the Board denied such a motion, stating that "granting such a motion in circumstances such as this would in effect result in the certification of the very union which less than a year before had been rejected by a majority of the employees." Id. at 2.

9 See North Electric Company, 165 N.L.R.B. 942 (1967).

about 25% of the unit. Since only the 2824 union members were given the opportunity to vote, and 774 of those voted against the affiliation,[10] the result could have been significantly different if all employees had been given the opportunity to participate in choosing the exclusive agent that would bargain for all of them.

The disadvantages of such "minority rule" are significant. First, it increases the probability of jurisdictional warfare between unions, with employees and firms caught in the middle. Thus the dissent in *North Electric Company, supra*, warns that "the amendment process may in the future be utilized to facilitate raiding between unions."[11] Secondly, the decision means that a few opinion leaders within the union can decide the result, and it thus increases the incentive to use improper means of persuasion, including special inducements to those individuals by a raiding union. Finally, the decision enhances the likelihood that employees may be forced to be represented by a deeply unacceptable union—one that is corrupt, for example, or one that will represent some groups at the expense of others. These concerns would be reduced by proper following of the requirement of the NLRA that all employees have the right to vote in the selection of the bargaining representative. They are not at all remedied by the continuity determination which the lower court approves.[12] At the very least, these concerns demonstrate a rea-

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10 738 F.2d at 1495.

11 165 N.L.R.B. at 944.

12 The court mentions several factors which may be considered in the continuity determination. Id. at 1488. However, if the Board decides which factors to consider, and what weight to be given to those factors, the right of the employee to select a bargaining representative based on the factors he considers most important is seriously diluted. This Court has said of the selection of a bargaining representative that "Congress attached no conditions whatsoever to their [the employees'] freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide." Hill v. Florida ex rel. Watson, 325 U.S. 538, 541 (1945).

sonable basis for the Board's approach, which is all that is required. [13]

The lower court's opinion leaves the non-union employee, who wishes to exercise his right to have a voice in the choice of his representative, without viable options. He could join the union in order to vote, but the Act guarantees each employee the right to refrain from union activity. [14] This right should not have to be relinquished in order to exercise another right protected under the Act: the right to select one's own bargaining representative. [15] Further, if this right can only be exercised by joining the union, the result is to pressure employees to join the union, and this result violates the Act's position of neutrality. [16]

Likewise, provisions for decertification do not provide a viable option in most cases. An after-the-fact procedure can in no way replace the right to participate in the initial election, and because of the presumptions and other difficulties built into the decertification process, [17] an employee who does not agree with

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13 Beth Israel, 437 U.S. at 501.

14 29 U.S.C. sec. 157 (1973).

15 Id.

16 In NLRB v. Savair Mfg. Co., 414 U.S. 270 (1973), this Court found a waiver of initiation fees to all employees who signed union authorization cards prior to a certification election to be an impermissible influence in favor of unionization. As the Court said in that case:

> Any procedure requiring a 'fair' election must honor the right of those who oppose a union as well as those who favor it. The Act is wholly neutral when it comes to that basic choice.

Id. at 278.

17 The Ninth Circuit describes these procedures to illustrate the policy of preserving stability in the bargaining structure. 738 F.2d at 1491-1492. However, that discussion by the Court also illustrates the difficulties faced by a non-member who wants some input regarding the bargaining representative. The court describes the

a Board determination of continuity and is not satisfied that the new bargaining representative is indeed the choice of the majority of the unit faces a heavy burden in protecting his rights.

B. The decision below interferes more with industrial peace than does the NLRB rule which it rejects.

If the majority of employees are deeply dissatisfied with the choice of representative, the lower court rule provides them no alternative but to seek decertification. Such an effort, whether successful or not, will be divisive, will create animosities, and will foster the very perceptions of unfairness that the democratic processes of the Act are designed to avoid. Although the court below stated that its approach would promote "labor peace,"[18] that approach actually interferes with that goal.

The lower court's approach also interferes with labor peace to the extent that it facilitates "raiding" between unions. Union members will likely be subjected to more frequent and more intense pressures to affiliate with other unions, "a result which could only increase industrial strife."[19]

Further, as Petitioner Seattle-First National Bank has pointed out, the disruption in the instant case occurred because of the union's refusal to follow Board sanctioned procedures in effect at the time. If those procedures had been followed, and if the employees had in fact voted for a new representative, a transition could have occurred smoothly. Thus the only situations in which the Board's rule is likely to be disruptive are those

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presumptions of majority status that a certified union enjoys, the fact that decertification will not even be considered by the Board without a petition of 30% of the employees of the unit, or a showing of "extreme" circumstances, and the contract-bar rule, which allows no decertification elections during the life of the contract. Id.

18 738 F.2d at 1491.

19 North Electric Company, 165 N.L.R.B. at 944.

in which the union refuses to follow the rule or in which there is real doubt as to the acceptability to the majority of the union which is being proposed. The Board's rule simply includes all employees in an election that must be held in any event and that would otherwise differ only in its underinclusiveness; thus the Board's rule not only protects the rights of all employees, but does so with no significant increase in effort or expense.[20]

The court below suggests that the new rule is disruptive because under it "an affiliation decision will always call a union's continuing majority status into question."[21] There can be no "*continuing* majority status," however, when the bargaining representative changes. In any event, the Board rather than the Ninth Circuit is the body with expertise to resolve questions that thus require interpretation of policies underlying the Act.

CONCLUSION

The Petition for Certiorari should be granted.

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20 The court below characterized the affiliation decision (erroneously, it is submitted) as merely "an internal union affair." The policy of noninterference with internal union affairs is not challenged here. Since an affiliation decision involves the very identity of the bargaining representative, it cannot be an "internal" decision, but must recognize the statutory right of all employees to participate. At a minimum, the question requires judicial deference to the Board's expertise.

21 738 F.2d at 1486.

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Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE

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Respondent.

On Writ Of Certiorari To The United States
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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE

This brief *amicus curiae* is filed with the written consent of the parties. The letters giving consent have been separately filed with the Court.

INTEREST OF THE AMICUS CURIAE

The Chamber of Commerce of the United States is a federation consisting of several thousand state and local chambers of commerce and trade and professional associations as well as more than 180,000 corporations, partnerships and proprietorships who maintain direct membership. It is the largest association of business and professional organizations in the United States.

The Chamber regularly represents the interests of its member employers in important labor relations matters before the courts, the United States Congress, the Executive Branch, and the independent regulatory agencies of the federal government. Such representation constitutes a significant aspect of the Chamber's activities. Accordingly, the Chamber has sought to advance its members' interests in a wide spectrum of labor relations litigation.

The Chamber has filed *amicus* briefs in the case before the Ninth Circuit on both occasions in which this case was before that Court. The Chamber also filed briefs in the similar case in the Fifth Circuit—*Amoco Production Co.* v. *NLRB,* on both occasions in which the Fifth Circuit had that case under consideration (see its decisions in 613 F.2d 107 [5th Cir. 1980] and in *Local No. 4-14, Oil Workers Int'l. Union* v. *NLRB,* 721 F.2d 150 [1983]). The Chamber's primary concern in both cases related to the NLRB's failure to look realistically at these so-called change-in-affiliation cases and its readiness to permit the substitution of large international unions for independent unions without giving employees the kind of governmentally monitored free choice which the National Labor Relations Act is intended to protect.

In the Chamber's view, the Board, by unwarranted legal fictions, has tended to avoid holding elections in such cases by finding that each such large labor organization is, as a matter of law, the same labor organization as the independent, without adequate scrutiny of the record facts.*

In this case the Board, while not requiring an NLRB election, has at least required that all employees in the unit be afforded an opportunity to vote in a union-conducted election before the Board will issue an amended certification in the name of the international union.

At least that much concern is welcomed by the Chamber, and we do not believe a Court of Appeals should be allowed to undo that much reform by the Board in this area.

It is the Chamber's position that a Court of Appeals cannot properly second guess the N.L.R.B. when the Board has exercised its administrative discretion to deny a petition for an amended certification. More particularly, the Chamber's view is that the Board is well within the scope of its administrative discretion when it requires unit-wide employee participation in a union-conducted private election on a change in affiliation as a precondition to amending an existing certification.

The Chamber urges that review courts should not be allowed to interfere with the Board's commendable administrative efforts to promote a broader employee franchise in affiliation changes.

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* While we believe the Board demonstrated exactly that tendency in this case, that is not the issue currently before this Court, as we understand it.

SUMMARY OF FACTS AND PROCEEDINGS

In the present posture of this case, the relevant facts are uncontroverted, and were reasonably accurately summarized in the Opinion of the Ninth Circuit. *Financial Institution Employees of America, Local No. 1182* v. *NLRB*, 752 F.2d 356 (9th Cir. 1984) at 357-359. We will review them briefly here.

In 1970, the Firstbank Independent Employees Association (the Independent) had been certified by the National Labor Relations Board as the exclusive bargaining representative of a unit of employees of Petitioner Seattle-First National Bank (the Bank). By 1978, there were 4,800 employees in that bargaining unit. In February of 1978, the Independent conducted a vote among its members, and a majority of those voting (1,206 out of 1,980) voted to affiliate with the Retail Clerks International Union, which has since merged into the United Food and Commercial Workers Union.

Acting upon a petition for amendment to the Independent's certification, the National Labor Relations Board, in April of 1979, granted the petition and, by the amendment, certified "Financial Institution Employees of America, Local No. 882, chartered by Retail Clerks International Union, AFL-CIO" (the Affiliated Local).

The Bank refused to recognize or bargain with the Affiliated Local, and in an ensuing unfair labor practice proceeding, the NLRB found the Bank guilty of an unlawful refusal to bargain, violative of Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered the Bank to bargain with the Affiliated Local. The Board's findings and conclusions rested squarely

on the amended certification, and not on any evidentiary determination that the Affiliated Local actually enjoyed majority status among the employees in the bargaining unit.

The Bank had challenged the validity of the amended certification on two primary grounds: (1) that all employees in the unit, not just union members, should have been permitted to vote on the affiliation; and (2) that the Affiliated Local was a substantially changed and different union from the Independent, and therefore could be entitled to bargaining rights and a certification only if it had demonstrated majority status in a Board-conducted election. The Board rejected both contentions, sustained the validity of the affiliation, and ordered the Bank to recognize and bargain with the Affiliated Local.

The Bank petitioned for review of the Board's order in the Ninth Circuit, and the Board cross-petitioned for enforcement. Before the Court reached the case for decision, the Board requested the Court to remand the case to the Board for reconsideration because it was analytically dependent upon *Amoco Production Co. (Amoco III)*, 239 N.L.R.B. 1195 (1979), remanded *Amoco Production Co.* v. *N.L.R.B.*, 613 F.2d 107, 111-112 (5th Cir. 1980), a somewhat similar case which had been remanded to the Board by the Fifth Circuit. The Fifth Circuit had remanded for a factual analysis of the Board's conclusion that the Affiliated Union there was the same union as the previously unaffiliated union, or, as it is sometimes phrased, whether there was sufficient continuity between the pre- and post-affiliation union.

On remand, however, the Board did not undertake such an analysis, either in *Amoco* or in this case. Instead,

the Board, in both cases, announced a revision of its "due process" prerequisite for issuing amended certifications, ruling that as a part of such "due process" a petitioner seeking an amended certification would be required to show that all bargaining unit employees, not just union members, had been given an opportunity to vote on the affiliation. Since that prerequisite was not met, either in *Amoco* or here, the Board in each case, on remand, revoked the amended certification and dismissed the unfair labor practice complaint of refusal to bargain.

It should perhaps be noted here that the NLRB had required, from 1977 to 1979, that such an all-unit opportunity to vote had been provided, as a prerequisite to issuing an amended certification. That requirement had been announced in *Jasper Seating Co.*, 231 NLRB 1025, 1026 (1977). In its decision in *Amoco III*, 239 NLRB 1195 (1979), however, the Board had overruled *Jasper Seating*, and thus in both the *Amoco* case and the Board's original decision here, it had not required the all-unit opportunity to vote. Upon the remands in *Amoco Production Co. (Amoco IV)*, 262 N.L.R.B. 1240 (1982) and here, the Board thus once again reverted to its 1977-1979 requirement of the all-unit voting opportunity.

The Affiliated Local petitioned for review of the Board's decision on remand in this case. The Ninth Circuit found the Board's requirement of an all-unit voting opportunity to be irrational and inconsistent with federal labor policy. It thus once more remanded to give the Board the opportunity to make a factual determination of whether the Affiliated Local was the same union as the Independent, or whether it was substantially changed. The Court rejected the plea of the Bank, the

Affiliated Local, and the United States Chamber of Commerce, as *amicus,* that the Court itself review the factual merits and make a determination of this issue. *Financial Institution Employees of America, Local No. 1182* v. *NLRB,* 752 F.2d 356, at 359, n. 4.

Both the NLRB and the Bank then petitioned this Court for *certiorari,* each pointing out that the Fifth Circuit in *Amoco IV, Local No. 4-14, Oil Workers Intl Union* v. *NLRB,* 721 F.2d 150 (1983) had reached a contrary result, upholding the Board's reversion to its Jasper Seating requirement of an all-unit opportunity to vote as a prerequisite for granting amended certifications. A conflict in the Circuits is thus presented, and this Court has now granted *certiorari.*

SUMMARY OF ARGUMENT

It is the Chamber's position, on the issue now before this Court, that the Court of Appeals for the Ninth Circuit overreached its reviewing authority, and has improperly attempted to restrain a proper exercise of administrative discretion by the National Labor Relations Board.

When a union requests an amended certification because of a change in affiliation, the Board applies two tests—one statutory, the other administrative, and hence discretionary, in nature.

The statutory issue is whether the change in affiliation has resulted in a substantially changed union. If so, the Board has no statutory authority to amend the certification. There is such an issue in this proceeding, but it is not before this Court because it was not decided by the Board although the Court's initial remand contemplated that it would be.

The administrative, discretionary issue is whether the change in affiliation has taken place by what the Board deems reasonably democratic procedures. The Board here, upon remand, determined that the union had too narrowly construed the scope of the democratic franchise, in that only union members, instead of all employees in the unit, had been given an opportunity to vote. Hence the Board revoked the amended certification which it had earlier granted.

The Board then dismissed, upon remand, the unfair labor practice complaint, because it had rested squarely upon the validity of the amended certification. Hence the only issue before the Ninth Circuit after the Court remand was whether the Board had properly exercised its discretionary authority with respect to monitoring its certifications.

The Board, we urge, must be permitted wide latitude to establish and revise the standards to be met by a union seeking to have the Board amend an already issued certification. In such administrative matters, the Board's authority is either totally unreviewable under 5 U.S.C. §701, or review is restricted, under 5 U.S.C. §706, to situations in which the Board's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

The Board's policy of establishing certain democratic standards for an affiliation vote as a prerequisite to granting an amended certification to a newly affiliated union is well within its administrative discretion. The current policy of including among such prerequisites an opportunity for an all-unit vote is appropriately and rationally grounded upon the Board's perceived need

to broaden the base of those democratic standards. While views may differ as to the need for thus broadening the base, the Board's decision to have done so is not arbitrary, capricious, an abuse of discretion, nor in any way not in accordance with the terms of the statute it is charged with administering. The redefinition of the democratic standards test which has occurred over the years with respect to the breadth of the franchise in affiliation votes represents a typical kind of revision in judgment which an administrative agency is entitled to make as its membership and its views change from time to time.

The Court of Appeals for the Ninth Circuit improperly seeks to narrow the discretion committed to agency discretion by law. The Court appears to have confused the discretion the Board has in such an administrative area with statutory limitations on its authority to regulate union conduct under its unfair labor practice jurisdiction. The Court erroneously appears to have treated this matter as if the Board had prohibited a union from adopting and enforcing rules governing its members' conduct. Instead, this case involves only the Board's conditioning the grant of a discretionary privilege — the issuance of an amended certification — on the union's meeting certain democratic standards in its affiliation voting.

In addition, the Court's premises will not withstand scrutiny. The Court's expressed concern for stability in collective bargaining and for the continued viability of the Board's contract bar rules in election cases are concerns which are simply not presented by the facts or the legal issues in this case. The Board has not altered its contract bar rules. Nor did the Board's decision here dis-

turb the term or the continued effectiveness of the collective bargaining agreement. Instead, the Board's decision here simply determined the appropriate designation of the union which is one of the contracting parties to the underlying collective agreement. The Board's denial of the amended certification merely left the Independent, rather than the Affiliated Local, as the appropriate party to continue to administer that contract on behalf of the unit employees.

Thus no legitimate concern for the Board's contract bar rules nor for bargaining stability can justify the Court's attempted interference with a proper exercise of administrative authority by the Board. The Ninth Circuit has improperly attempted to substitute its own judgment for the Board's in an administrative area entrusted to agency discretion. In so doing it has exceeded its proper reviewing authority.

ARGUMENT

I. The Board's Action in Denying a Requested Amendment to a Certification Should be Found to be Discretionary and Unreliable.

A. Although the Statute Restricts the Board's Authority to Issue Certifications, It Nowhere Mandates the Issuance of Amended Certifications.

The National Labor Relations Act, as amended, deals in only one section with the issue of when the Board is required to issue a certification to a labor organization of that union's status as the exclusive bargaining agent for employees. The only such reference is in that part of the Act establishing the Board's authority to hold a Board-conducted secret ballot election to determine whether a union represents a majority of the employees in an appropriate bargaining unit. In Section 9(c)(1), 29 U.S.C. §159(c)(1), the Act states:

> If the Board finds upon the record of such a [representation case] hearing that such a question of representation exists, it shall direct an election by secret ballot and *shall certify the results thereof.* (Emphasis supplied.)

Thus, under the Act, a labor organization has a *right* to a certification if and only if it has won an election conducted by the Board under Section 9 of the Act.[1] In no

[1] There is value for a union in earning such a certification. There is an exemption from union unfair labor practices under Section 8(b)(4)(B, 29 U.S.C. §158(b)(4)(B) for a labor organization which "has been certified as the representative of such employees under the provisions of

other circumstances is the Board *required* by law to issue a certification.

Nowhere does the Act refer to amendments of existing certifications. Since the only authority the Board has to issue a certification is to a union which has demonstrated its majority status in a Board-conducted election, it is obvious that an amended certification may only be issued to the *same* union which had previously demonstrated its majority status in a Board-conducted election.

Thus, in cases in which the Board has issued an amended certification to a union substantially *different* from the originally certified union, Courts of Appeal have held that the Board improperly issued the amended certifica-

(footnote 1 continued)
Section 9 . . .[1]." A union has protection under Section 8(b)(4)(C), 29 U.S.C. §158(b)(4)(C) from picketing by a rival union if the union seeking such protection "has been certified as the representative of such employees under the provisions of Section 9." A union also has an exemption from the prohibitions against jurisdictional dispute picketing under Section 8(b)(4)(D), 29 U.S.C. §158(b)(4)(D) if "the employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees perfoming such work." And a union also enjoys an exemption from the Act's prohibitions of recognition picketing under Section 8(b)(7), 29 U.S.C. §158(b)(7) if "such labor organization is currently certified as the representative of such employees."

On the other hand, a union which has not been issued a certification is not disabled from serving as a representative of employees or from entering into contracts on their behalf or from enforcing the terms of such contracts if the union in fact has majority status. Certification thus offers certain protections and advantages to a union, but is not an essential prerequisite to its successful functioning.

tion. *Retail Store Employees, Local 428* v. *NLRB,* 528 F.2d 1225,1228 (9th Cir. 1975); *Sun Oil Co. of Pennsylvania* v. *NLRB,* 576 F.2d 553 (3rd Cir. 1978); *NLRB* v. *Bernard Gloekler North East Co.,* 540 F.2d 197 (3rd Cir. 1976); *American Bridge Div. United States Steel Corp.* v. *NLRB,* 457 F.2d 660,663 (3rd Cir. 1972).

While the Board itself normally makes the initial determination as to whether the affiliated union is the same union, and has denied amendments on this ground, *Gulf Oil Corp.,* 135 N.L.R.B. 184 (1962), the courts in such cases as those cited above have been diligent in requiring that a Board finding of continuity be supported by substantial evidence, as is, of course, the courts' right and duty when reviewing Board findings in support of any order to remedy an alleged statutory violation.

While the Board's authority to *grant* requested amendments is, therefore, restricted as a matter of law, no provision of the Act *requires* the Board *ever* to amend one of its certifications. Hence in all affiliation cases, the Board could refuse to issue amended certifications, thus requiring any newly affiliated, disaffiliated, merged, or spun-off organization to participate in and win a Board-conducted election in order to earn a certification in its newly designated status.

Since there is no statutory requirement that the Board issue amended certifications at all, it follows that the Board has a very wide area of discretion as to when it will grant a request for such an amendment. No court decision of which we are aware, save for the Ninth Circuit's decision here, has ever attempted to exercise its review authority in such manner as to fault the Board for a refusal to grant a request for an amended certification.

B. The Board's Decision Not to Issue an Amended Certification Should Be Totally Immune from Judicial Review.

In this case, therefore, the Board's action in declining to issue an amended certification, which it has the *discretion* to issue but is under no statutory obligation to issue, is an action which should be committed solely to agency discretion, and not subject to review at all. 5 U.S.C. §701 precludes any judicial review when "agency action is committed to discretion by law." §701(a)(2).

In parallel cases under other laws, courts have held administrative decisions on similar discretionary grants to be totally unreviewable. In *Sierra Club* v. *Hickel,* 467 F.2d 1048 (6th Cir. 1972), *cert. den.,* 411 U.S. 920 (1973), for example, when the Secretary of the Interior had discretion to, but was not statutorily required to, enter into land exchange agreements, his refusal to enter into such an agreement was held not judicially reviewable. Similarly, in *Knight Newspapers, Inc.* v. *United States,* 395 F.2d 353 (6th Cir. 1978), when a statute gave the Postmaster General authority to make postage refunds, but did not require him to do so, his action in denying a refund was held not reviewable. And in *Ferry* v. *Udall,* 336 F.2d 706 (9th Cir. 1964), *cert. den.,* 381 U.S. 904 (1965), when the statute gave the Secretary of the Interior the authority to issue "cash certificates" evidencing his sale of certain public lands, but did not require him to sell such lands or issue such certificates, his refusal to issue such a certificate was held nonreviewable.

Not only is the issuance of amended certifications a discretionary administrative grant under the N.L.R.A., but

indeed the Board's exercise of its Section 9 authority, in *toto,* is not subject to judicial review.[2] It may be incidentally reviewable, when the Board restrains an unfair labor practice because Section 9(d) requires that a relevant representation case record be included in the record of the unfair labor practice proceeding when the Board's unfair labor practice order is before the Circuit Court for enforcement or review. *American Federation of Labor* v. *National Labor Relations Bd.,* 308 U.S. 401 (1940) at 410,411. But here the Board has decided *not* to restrain any unfair labor practice because the erroneously issued certification had been revoked, and thus there was no basis for the once but no longer viable Section 8(a)(5) proceeding.

When the Board is not obligated to, and has not issued a certification, and has thus dismissed the unfair labor practice proceeding sought to be predicated thereon, the courts have held that the Board's dismissal of the unfair labor practice proceeding is not reviewable. *General Drivers, Etc.* v. *National Labor Relations Board,* 179 F.2d 492 (10th Cir. 1950). That case dealt with a situation in which the Board had declined to issue a certification in the first instance. But the reasoning applies equally to a situation in which an amended certification has been revoked. In

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[2] Representation case decisions by the National Mediation Board, the Board's counterpart in the railway and airline industries, have also been held not to be judicially reviewable. *Switchmen's Union of North America, et al.* v. *National Mediation Board, et al.,* 320 U.S. 297 (1943).

The courts have also affirmed the N.L.R.B.'s authority to "police its own certifications,"as the Ninth Circuit has itself recognized. *NLRB* v. *Detective Intelligence Service,* 448 F.2d 1022, 1025 (9th Cir. 1971). See also *National Labor Relations Bd.* v. *Clarostat Mfg. Co.,* 216 F.2d 525 (1st Cir. 1954).

neither instance is there an outstanding, viable certification on which to predicate an unfair labor practice, and the unfair labor proceeding thus must fall as a matter of course.

We therefore respectfully submit that the Board's exercise of its administrative discretion here by refusing to issue the amended certification because the Union failed to meet the Board's prerequisites, is not subject to any judicial review at all. Once the certification was revoked, there was no basis for the refusal to bargain charge, and the complaint had to be dismissed.

II. The Board's Refusal to Amend the Certification Here Was, In Any Event, a Reasonable Exercise of Its Discretion.

A. The Limited Reviewability Standard of 5 U.S.C. §706.

While we have urged that the Board's exercise of its discretion in refusing to grant a requested amendment to a certification be held to be non-reviewable under 5 U.S.C. §701, we recognize that it may be argued that it is subject to a very limited review under 5 U.S.C. §706. 5 U.S.C. §706 provides that a reviewing court shall:

> . . . hold unlawful and set aside agency action, findings, and conclusions found to be:
>
> a) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

As the Ninth Circuit itself noted at some length in *Ness Investment Corporation* v. *United States Department of Agriculture, Forest Service,* 512 F.2d 706 (9th Cir. 1975), some tension exists between the total nonreviewability concept of Section 701 and the arbitrary and capricious standard of Section 706. But, as the Ninth Circuit held in *Ness,* very little, if any, opportunity for re-

view is available when an administrator has the discretion to, but is not required to, issue a certificate or permit.

B. The Board's Standards For Issuing Amended Certifications in Cases of Changed Affiliations.

The National Labor Relations Board has, over the years, chosen to issue amended certifications under certain limited circumstances. As already pointed out, it can do so under the statute only if the requesting union is the same union as the one previously certified under a different name. This has become known, and was referred to by the Ninth Circuit, as the Board's test of "continuity of representation" in the course of which, in a case involving a change in affiliation, the Board determines whether the nature and character of the union was in any significant respect substantially changed as a result of the change in affiliation.

In addition to seeking to comply with that statutory limitation on its right to issue certifications, the Board has also exercised its discretion in affiliation change cases by utilizing its administrative discretion to establish certain prerequisites which must be met as a condition of granting the privilege of the amended certification. The standards which it has adopted relate, essentially, to whether the affiliation change was accomplished by democratic means.[3] Thus the Board has required that there be ade-

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[3] Although sometimes termed a "due process" inquiry, it does not relate to the protection of property rights against a governmental taking, in the traditional due process sense. Instead the inquiry relates to whether democratic procedures have been followed, and might more appropriately be referred to as the Board's "democracy" test.

quate and proper notice of the affiliation vote,[4] and an orderly voting procedure, including reasonable precautions to maintain a degree of secrecy of the ballot.[5] We know of no case in which any court of appeals has ever held that the Board could not properly exercise its administrative discretion by establishing and enforcing these democratic prerequisites to granting an amended certification in cases of new or changed affiliation. Nor does the Ninth Circuit so suggest here.

In formulating and applying these democratic standards, the Board has vacillated on the issue of the breadth of the democratic franchise. Prior to 1977, the Board deemed its democracy requirement met even though only union members were allowed to vote on the affiliation issue. As pointed out, *supra,* p. 6, a majority of the Board Members decided otherwise in the *Jasper Seating* case in 1977, and for the next two years the democracy test included a broader franchise—one extending to all employees in the bargaining unit. This was done on the theory that since the union has a duty to represent all employees in the unit, all such employees should have a voice in determining whether their bargaining agent should affiliate with an international union or change or rescind such an affiliation.

By 1979, the composition of the Board had changed, and in *Amoco III,* by a 3-2 decision, a majority of the

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[4] *Peco, Inc.,* 204 NLRB 1036 (1973).

[5] See the discussion by both the majority and a dissenting members of the Board in *Bear Archery Div. of Victor Comptometer Corp.,* 223 NLRB 1169 at 1171-1172, and 1173-1174, enforcement denied, *NLRB* v. *Bear Archery Div. of Victor Comptometer Corp.,* 587 F.2d 812 6th Cir. (1977).

then Board members once again narrowed the required franchise to union members. In 1982, the Board membership had again changed, and in *Amoco IV,* the broader franchise requirement of *Jasper* was reinstated, again by a 3-2 decision of the Board.

The instant case has been buffeted by the winds of these changing views. The requested amended certification was originally sought here at a time when the broader franchise was required, but by the time it reached the Board for decision in 1979, the requested amended certification was granted, following the *Amoco III* precedent. Now, upon remand from the Court of Appeals, the amended certification was revoked in 1982, with the Board now following the *Amoco IV* precedent.

The difference in views among Board members on this issue appears to stem from whether they view a change in affiliation as having an "indirect" effect on unit employees who are not union members, as the dissenting Board members in *Amoco IV* argued,[6] or whether, as the majority asserted, "affiliation votes affect the interests of all employees," and an affiliation decision ". . . directly impacts on matters within the breadth of the Act . . ."[7] The members also differ on whether the requirement improperly impinges on internal union affairs, as the dissenting members argued,[8] or whether, as the majority stated, it is no more of an impingement on union internal affairs than the Board's other tests of democracy such

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[6] *Amoco IV,* 262 NLRB at 1242.

[7] *Id.* at 1241.

[8] *Id.* at 1242.

as its notice requirements and its orderly and properly protected voting requirements.[9]

As *amicus*, our sense of fairness leads us to the view that the current Board majority has the better of those arguments. We are offended by the injustice which would result here from permitting 1,206 employees to determine the affiliation issue for 4,800 employees. But whether one's own views tend to support the position of the current majority or the views of the dissenting Board members who were part of an earlier majority, we respectfully suggest that neither set of views can properly be described as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law" within the meaning of 5 U.S.C. §706.

Yet only if the current majority's views, and its decision herein, are that far beyond the scope of the discretion vested in the Board to monitor its own certifications can there be even an arguable basis for judicial review.

C. Change in An Agency's Views Does Not Increase Vulnerability to Judicial Review.

The changing views of the Board on the scope of the democratic franchise in affiliation votes may be a source of irritation for lawyers who try to advise clients as to the Board's requirements. But such changes are typical of the way the administrative process operates from time to time. Since the Board has discretion in this area, it may choose to exercise that discretion differently at different times without interference by reviewing courts. As this Court said in *NLRB* v. *Local 103, Iron Workers*, 434 U.S. 335, 351 (1978):

> An administrative agency is not disqualified from changing its mind.

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[9] *Id.* at 1241.

Changes in membership of administrative boards and commissions do result in some changes in viewpoint. Such changes neither invite nor authorize judicial reversal of their administrative determinations. In *Butte, Anaconda & Pacific Ry. Co.* v. *United States,* 290 U.S. 127 (1933), this Court held that the Interstate Commerce Commission had unreviewable discretion to determine whether or not a "deficit" was sustained. The Commission's definition of "deficit" had changed as its membership changed. This Court said at page 135:

> Obviously, "mistake there was none, but merely a revision of judgment in respect of matters of opinion." *United States* v. *Great Northern Ry. Co.,* 287 U.S. 144, 151.

In *Butte* this Court wisely refrained from itself determining which of the Commission's changing definitions was proper. Instead, this Court said:

> We have no occasion to determine which of the Commission's interpretations of the word "deficit" is the correct one. *Id.* at 135.

We respectfully submit that the Ninth Circuit here should similarly have refrained from determining which of the Board's varying views as to the appropriate breadth of the democratic franchise was the better view. Instead it should have limited itself to finding that the current majority's broader concept of the scope of the democratic franchise provides a rational basis for its action here.

The Board, we submit, here acted within its authority. It exercised its discretion in a reasonable manner in a debatable subject area. The law requires no more, even if the Board's action is subject to 5 U.S.C. §706, rather

than being, as we believe it is, within the wholly unreviewable province of 5 U.S.C. §701.

III. The Ninth Circuit Has Misconstrued and Misapplied Its Reviewing Authority.

A. This Is Not a Case In Which The Board is Regulating Union Conduct Through Its Unfair Labor Practice Jurisdiction.

Throughout its decision, the Ninth Circuit appears to have misconstrued the Board's action here as if the Board had been regulating union conduct by deciding that the union was guilty of an unfair labor practice and, thus, of violating the Act. Had that been what the Board was doing, the Court's ruling might arguably have been within the permissible scope of its reviewing authority in unfair labor practice proceedings.

As this Court well knows, the Board's decisions in unfair labor practice cases are, by the Act itself, made reviewable. 29 U.S.C. §160(f). In such cases the courts of appeal must determine both whether the Board's factual findings are supported by substantial evidence on the record considered as a whole and whether the Board's interpretation in application of the unfair labor practice prohibit prohibitions of the Act are consistent with the language of the statute and with Congressional intent in enacting the law. Even in such cases, however, the courts customarily grant deference to the Board's expertise. But there does not exist the same kind of essentially unreviewable discretion as is applicable to the Board's exercise of its Section 9 administrative functions.

The Court's confusion in this regard is perhaps made most clear by its discussion of whether the Board has, in

the Court's view, intruded too far into internal union affairs. In that discussion, the Court relies heavily on this Court's holdings in such cases as *NLRB* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *NLRB* v. *Boeing Co.*, 412 U.S. 67 (1973); and *Scofield* v. *NLRB*, 394 U.S. 423 (1969). But in all of those cases the issue presented for review was whether the respondent union had been guilty of an unfair labor practice. More precisely, the issue in each of those cases was whether the unions had violated their obligations to their members and thus had contravened the proscriptions of Section 8(b) of the Act, 29 U.S.C. §158(b), or whether the union's actions were, instead, a reasonable exercise of their powers of governance.

But here the Board has not found that there was any violation of the prohibitions of Section 8(b). No contention is made that the Independent's policy permitting only its members to vote on affiliation issues exceeded its powers of self-governance, nor that it constituted union coercion of employees in contravention of Section 8(b)(1), 29 U.S.C. §158(b)(1). The Board's holding, neither in *Amoco IV* nor in this case, prohibits any union from following whatever voting procedure it wishes on affiliation issues, without fear of prosecution under the unfair labor practice provisions of the Act.

The Court's discussion of those unfair labor practice cases adds nothing to the analysis of whether the Board's refusal of a discretionary benefit—an amended certification—may properly be conditioned upon this union's meeting certain Board-prescribed democratic standards. And indeed the Court itself seems to recognize the Board's authority to set such standards, when it speaks with apparent approval of what it calls "assuring that

democratic voting procedures are observed in affiliation elections," (752 F.2d at 367) by other of the Board-specified requirements designed to that end. Yet we assume that neither the Ninth Circuit nor any other Court of Appeals would enforce those democratic procedures which the Ninth Circuit praises by finding a failure to observe them a violation of Section 8(b)(4). Indeed, it is doubtful that the statute gives the Board any authority to so hold, in light of this Court's decisions in *Allis-Chalmers, Boeing,* and *Scofield.*

The Board is not, however, similarly limited with respect to requiring democratic safeguards, including a wider breadth of the democratic franchise, as a prerequisite to the discretionary grant of an amended certification. The Ninth Circuit appears to have failed to recognize the distinction, and by failing to do so has misconstrued its reviewing authority.

B. The Court is Wrong When It Says The Board Has jeopardized viability of Collective Agreements.

The Court is also wide of the mark in its attempted evaluation of the effect of the Board's amended certification rules on bargaining stability. It errs, first because striking of an appropriate balance between the need for industrial relations stability and the need for maintaining full freedom of choice for employees is precisely the kind of policy decision which is entrusted to the expert agency administering the Act. It is not an area in which the courts are entitled to second guess the Board.

As the Court of Appeals for the D. C. Circuit said in *Leedom* v. *International Broth. of Elec. Workers, Local Union No. 108, AFL-CIO,* 278 F.2d 237,242 (D.C. Cir. 1960):

> Congress relied on the Board's expertise to harmonize the competing goals of industrial stability and employee freedom of choice to best achieve the ultimate purposes of the Act.

Secondly, the Court appears to have misunderstood the effect of the Board's decision here. The decision not to amend a certification does not destroy the contract or the bargaining relationship, nor, as the Court seems to suggest, does it have the effect of decertifying a certified union. When the Board declines to amend, the old certification remains in full force and effect, and the original union has both the protection of its certification and its full rights as a party to the collective agreement. No union has been decertified, as the Ninth Circuit seems to suggest, nor is any term of the governing collective agreement altered one whit by the Board's declination to amend the certification.

The only effect of the Board's decision is as to the designation of the party entitled to administer the agreement on behalf of the employee constituency. If, as here, the Independent fails to follow adequately democratic procedures in effectuating its attempted affiliation, then it must continue to administer the agreement as an independent, unaffiliated union. Had it followed the Board-prescribed democratic requirements, then it could administer the contract as an affiliated local.[10]

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[10] We find nothing in the Board's decision in this matter which discusses the continued viability of the contract. Nor do we find any indication in the Board of the Court's opinion that the Bank was shown, by this record, to have repudiated its contract here. The Ninth Circuit notes that in *Amoco* the employer "unilaterally cancelled" the current contract. We find no discussion in any of the decisions issued by the Board or by the Fifth Circuit in the *Amoco* cases as to whether that repudiation *per se* was a viola-

In summary, then, the Court of Appeals for the Ninth Circuit seems to have misconstrued its reviewing authority by approaching this case as if this were a proceeding against a union in which the Board had found the union guilty of unfair labor practices. Instead, this case is an unfair labor practice proceeding against the employer, charging only a refusal to bargain, and predicated solely upon the Affiliated Local's possession of an amended certification issued to it by the Board. When the Board, in its discretion, subsequently decided it had improvidently issued that amended certification and revoked it, the refusal to bargain case fell. That case stood or fell solely upon the amended certification and thus upon an exercise of the Board's discretionary administrative powers, an area as to which a Court of Appeals has little, and probably no, reviewing authority.

Furthermore, in attempting to apply what it misunderstood as its reviewing authority, the Court compounded its error by confusing this case with one in which a union had been shorn of its bargaining rights and/or of its contract rights. But the mere denial of a requested amend-

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(footnote 10 continued)
tion of the Act. Such repudiation may, at least arguably, be lawful if an affiliation results in a substantially different union. In such a situation, if the original contracting union no longer exists, and a substantially changed union is the only labor organization claiming to represent the employees, it may be that the contract has become a nullity because of the defunctness of one of the contracting parties. Under those circumstances the employer would not be bound by a contract and could "repudiate" it. That issue is not presented here because the Board did not decide the continuity issue on remand, because there is no claim here of a contract repudiation by the Bank, and because there has been no finding here that the Independent is defunct.

ment to a certification does not destroy the Independent's rights in those areas, unless, of course, the affiliation worked a substantial change in the union — a matter which has not here been determined. Since it must therefore be assumed for present purposes that the Affiliated Local is essentially the same union as the Independent, the only issue is whether the Independent or the Affiliated Local is to be the one designated in the Board's certification and the one to administer the contract. That simply does not present the kind of issues with which the Court seemed to believe it was dealing.

These considerations, too, require a finding here that the Court exceeded its reviewing authority, perhaps because its premises were faulty. But whatever the reasons, as we believe we have demonstrated throughout this brief, the Court did not have authority to interfere with the Board's reasonable exercise of its administrative discretion in declining to grant an amended certification. Once it had exercised its discretion in this manner, there was no basis for the unfair labor practice proceeding, and its order of dismissal of that proceeding should be sustained.

CONCLUSION

The decision of the Court of Appeals for the Ninth Circuit should be reversed, and the Board's revocation of its amended certification and its ensuing dismissal of the unfair labor practice proceedings should be allowed to stand.

Respectfully submitted,

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Nos. 84-1493 & 84-1509

IN THE
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and

SEATTLE-FIRST NATIONAL BANK,
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v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL NO. 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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June 27, 1985

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BRIEF FOR THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

This amicus curiae brief for the National Right to Work Legal Defense Foundation ("Foundation") is filed with the written consent of all parties. Sup. Ct. R. 36.2. It supports the position of petitioners that the decision of the court of appeals, reviewing unfavorably an order of the National Labor Relations Board, should be reversed.

INTEREST OF THE AMICUS CURIAE

The Foundation is a charitable, legal aid organization formed to protect the right to work, freedoms of association and speech, and other fundamental liberties of ordinary working men and women from infringement by compulsory unionism. The Foundation has aided or received requests for assistance from many non-union employees who, as a result of affiliation elections held by their local exclusive bargaining representative, have been compelled to associate unwillingly with national or international labor organizations to which they are opposed. The decision of the court of appeals in this case would deny to such employees the right to vote in those critical elections. The Foundation submits this brief to ensure that the Court has the views of that class of persons whose freedom of association and economic livelihood will be directly and adversely affected if the court of appeals' decision is not reversed.

SUMMARY OF ARGUMENT

The decision of a certified bargaining representative to affiliate with a national or international labor organization is a matter which directly affects the rights and economic interests of all employees in the bargaining unit, union and non-union alike, because of the pervasive power given to the union by the National Labor Relations Act ("the Act" or "NLRA"), 29 U.S.C. §§ 151-69 (1982), through the statutory principle of exclusive representation. The Act's overriding policy is one of employee free choice in organizing for purposes of collective bargaining.

Therefore, all bargaining unit employees, not just union members, must be afforded an opportunity to vote on such an affiliation before the newly affiliated union can claim the privilege of continued recognition as the employees' exclusive bargaining agent. This conclusion is not only consistent with the Act, but is required to avoid a conflict between exclusive representation and the constitutional guarantees of due process of law and freedom of association.

ARGUMENT

I. A Bargaining Representative's Decision to Affiliate Is Not an Internal Union Matter Because of the Pervasive Nature of the Power of Exclusive Representation

The underpinning of the opinion of the majority of the Ninth Circuit panel is the belief that the decision of a certified bargaining representative to affiliate with a national or international labor organization is an "internal" union matter. *See Financial Institution Employees, Local 1182 v. NLRB*, 752 F.2d 356, 362-64 & nn.9-10 (9th Cir. 1984)(2-1 decision), *cert. granted*, 53 U.S.L.W. 3807 (U.S. May 13, 1985) (Nos. 84-1493, -1509). That assumption ignores the nature of the statutorily created power of exclusive representation and its pervasive effect upon the rights and economic well-being of non-union employees represented by the union.

Once a labor organization has been designated as their representative by the majority of the employees in a bargaining unit, the NLRA makes that union the exclusive

bargaining agent for all employees in the unit, union and non-union alike. 29 U.S.C. § 159(a). The Act

> extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. * * * [O]nly the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances; the union may even bargain away his right to strike during the contract term, and his right to refuse to cross a lawful picket line. The employee may disagree with many of the union decisions but is bound by them.

NLRB v. Allis-Chalmers Manufacturing Co., 388 U.S. 175, 180 (1967) (footnotes omitted). In addition, the Act authorizes the majority union to negotiate agreements requiring non-union employees to support financially its performance of the duties of an exclusive representative. 29 U.S.C. §§ 157, 158(a)(3); *see Ellis v. Railway Clerks*, 104 S. Ct. 1883, 1892 (1984).

In short, exclusive representation puts the economic life of the non-union employee at the mercy of the majority union: "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents * * * ." *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 202 (1944). Through compulsory unionism agreements, those "legislative" powers include even the ultimate power of taxation.

In these circumstances, it is disingenuous to say that

the affiliation of a local bargaining representative with a national or international union is merely an internal union matter which does not directly affect all employees in the bargaining unit. Through that affiliation the non-union employee, at the least, is unwillingly associated with, and required to accept the bargaining policies of, an organization with which he may disagree for economic or ideological reasons. *See Abood v. Detroit Board of Education*, 431 U.S. 209, 222 (1977). If the union negotiates a compulsory unionism agreement, then he also will be required to subsidize the institutional activities of the national or international, such as social affairs, publications, and conventions. *See Ellis*, 104 S. Ct. at 1896-97. Perhaps worst of all, if his health or pension plan is administered by the union, and it chooses to affiliate with a national or international that has been infiltrated by organized crime, his medical benefits or the security of his retirement years may be jeopardized. *See, e.g., Brown v. Hotel & Restaurant Employees Local 54*, 104 S. Ct. 3179 (1984); Roukis & Charnov, *The RICO Statute: Implications for Organized Labor,* 36 Lab. L.J. 281, 285-87 (1985); *Union Corruption Worse Than Ever*, U.S. News & World Rep., Sept. 8, 1980, at 33.

II. The Act's Most Fundamental Policy is Employee Freedom of Association, Not Stability in the Bargaining Representative

The second major leg of the Ninth Circuit majority's decision is the assertion that a "policy of maintaining stability in the bargaining representative" is more important to achieving the Act's purpose of promoting "industrial peace" than is employee freedom of choice. *See*

Financial Institution Employees, 752 F.2d at 364-66. The fallacy in that argument is that it relies on a so-called "policy" extrapolated by the Ninth Circuit majority from rules adopted in other contexts by the National Labor Relations Board ("Board"), *see id.* at 365-66, while employee freedom of choice is explicitly guaranteed by the Act itself.

"It is indisputable that the thrust of the NLRA is not the protection of the union, not the protection of the employer, but rather the protection of the employee." *Mosher Steel Co. v. NLRB*, 568 F.2d 436, 442 (5th Cir. 1978). The Act does not foster union representation *per se*, but guarantees employees the right to self-determination as to union representation.

Senator Wagner, architect of the original Act, said that whatever controversy there might be with regard to other aspects of federal labor policy, "there is practically unanimous agreement in Congress * * * that the right of employees to organize and bargain collectively through representatives *of their own choosing* should be safeguarded *at all times.*" 79 Cong. Rec. 7568 (1935) (emphasis added). Consequently, the congressional declaration of policy in the Act established the protection of employee freedom of association as a fundamental purpose of the statute:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions * * * *by protecting the exercise by workers of full freedom of association*, self-organization, and designation of

> *representatives of their own choosing*, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

NLRA, ch. 372, § 1, 48 Stat. 449, 449-50(1935) (codified as amended at 29 U.S.C. § 151) (emphasis added).

That basic policy of protecting employee self-determination has been implemented in the operative provisions of the Act since its enactment. Section 7 guarantees individual employees "the right to self-organization, to form, join, or assist labor organizations, [and] to bargain collectively through *representatives of their own choosing* * * * ." *Id.* § 7, 49 Stat. at 452 (codified as amended at 29 U.S.C. § 157)(emphasis added). Section 9(a) states that "[r]epresentatives designated or selected for the purposes of collective bargaining *by the majority of the employees* in a unit" shall be the exclusive representative of all employees in that unit. *Id.* § 9(a), 49 Stat. at 453 (codified as amended at 29 U.S.C. § 159(a)) (emphasis added). And, the Act's unfair labor practice provisions, set out in section 8, 29 U.S.C. § 158, as Senator Wagner said, "are intended to make the worker a free man, to decide for himself whether he wants an organization, and if he wants one, what the type of that organization should be." 75 Cong. Rec. 7574 (1935).

Then, in 1947 Congress responded to concerns that individual employees were not adequately protected in their relations with labor organizations by amending section 7 to provide expressly that employees "shall also have the right to refrain from any or all of [the] activities" in which the original Act guaranteed them a right to participate. Labor Management Relations Act, ch.

120, § 101, 61 Stat. 136, 140 (1947); *see id.* § 1(b), 61 Stat. at 136 (codified at 29 U.S.C. § 141(b)). Congressman Hartley, the House sponsor and floor manager of the 1947 bill, stated at the outset of the debate in the House that the *first* right which the bill guarantees to the workingman is "[t]he right to join with the fellow workers to select a collective-bargaining agent of their own choosing, that is to say, one that is not forced upon them * * * ." 93 Cong. Rec. 3425 (1947).

This Court too, from the beginning, has viewed protection of employee self-determination in the selection of a bargaining agent as *the* overriding purpose of the Act. Shortly after the Act was passed, the Court said, "Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining *is often an essential condition of industrial peace.*" *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 42 (1936) (emphasis added). As the Court explained in *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 280 (1956), the two declared policies of the Act, to preserve a competitive business economy and to protect the rights of labor to organize, "depend for their foundation upon assurance of 'full freedom of association.' *Only after that is assured* can the parties turn to effective negotiation as a means of maintaining 'the normal flow of commerce and . . . the full production of articles and commodities . . . .'" *See Hill v. Florida ex rel. Watson*, 325 U.S. 538, 541-42 (1945).

In this case, the Board has held that a certified bargaining representative must afford all bargaining unit

employees, not just union members, an opportunity to vote on its affiliation with a national or international labor organization, before the newly affiliated union can claim the privilege of continued recognition as the employees' exclusive representative. Although the Ninth Circuit majority would have it otherwise, the statutory language, legislative history, and decisions of this Court demonstrate that "[t]he Board's position is rooted in the generally prevailing statutory policy that a union should not purport to act as the collective-bargaining agent for all unit employees, and may not be recognized as such, unless it is the voice of the majority of the employees in the unit." *NLRB v. Iron Workers Local 103*, 434 U.S. 335, 344 (1978).*

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* In *Iron Workers Local 103*, the Court also said:

> "There could be no clearer abridgment of § 7 of the Act, assuring employees the right 'to bargain collectively through representatives of their own choosing' or 'to refrain from' such activity" than to grant "exclusive bargaining status to an agency selected by a minority of its employees, thereby impressing that agent upon the nonconsenting majority."

434 U.S. at 344 (quoting *Ladies' Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961)). The Board's decision in *North Electric Co.*, 165 N.L.R.B. 942 (1967) (3-2 decision), cited in the Ninth Circuit majority opinion in this case, 752 F.2d at 361 n.7, graphically demonstrates that not allowing non-members to vote in an affiliation election can result in the certification of a union selected by a minority of the employees in a bargaining unit. In *North Electric* an independent union defeated the Allied Industrial Workers of America ("AIW") by an 84 to 80 vote in a Board-conducted election. At a union meeting held approximately 15 months later, the independent adopted a motion to affiliate with the AIW by a vote of 52 to 2. There were 288 employees in the unit, 50 of whom were not union members and could not vote at the union meeting. The Board majority certified the newly affiliated AIW local as the exclusive representative, despite the fact that more employees (84) had voted against the AIW in the Board-conducted election than the number (52) who voted for it on the affiliation motion. 165 N.L.R.B. at 942-43.

III. Constitutional Considerations Require That Non-Union Employees Be Given an Opportunity To Vote in Their Exclusive Representative's Affiliation Election

The provisions of the NLRA for exclusive representation are comparable to those of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-88 (1982). *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953). In the *Steele* case, the Court was faced with arguments that exclusive representation is unconstitutional under the fifth amendment to the Constitution of the United States, because it deprives the minority of employees in a bargaining unit of liberty and property without due process of law. *See Steele*, 323 U.S. at 198-99 (opinion of the Court); *id.* at 208 (Murphy, J., concurring). Similar arguments had been successful in earlier cases in which the Court struck down the exclusive representation provisions of other Depression-era legislation. *See Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) (opinion of the Court); *id.* at 318 (Hughes, C.J., concurring); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935).

The Court avoided the constitutional questions in *Steele* by interpreting the RLA as "impos[ing] on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them." 323 U.S. at 202-03. This duty of fair representation is imposed on unions under the NLRA as well as the RLA. *Ford Motor Co.*, 345 U.S. at 336-38. Wherever necessary to the end of fair representation, "the union is required to consider requests of non-

union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give them notice of an opportunity for hearing upon its proposed action." *Steele*, 323 U.S. at 204.

If considerations of constitutional due process require that non-union employees be given an opportunity to participate in the process of collective bargaining, *a fortiori*, those same considerations mandate that non-members be allowed to participate in a vote which will determine the very identity of their government-certified bargaining representative. It is no answer to say, as did the majority of the Ninth Circuit panel in *Financial Institution Employees*, 752 F.2d at 363 n.10, that "non-union members interested in an affiliation decision are free to join the union." That would compel the employee to give up his right to refrain from union membership, a right guaranteed by the first amendment to the United States Constitution as well as by section 7 of the Act. *See Roberts v. United States Jaycees*, 104 S. Ct. 3244, 3252 (1984); *Abood*, 431 U.S. at 234-35.

This Court has made it clear on statutory grounds that "[a]ny procedure requiring a 'fair' election must honor the right of those who oppose a union as well as those who favor it." *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270, 278 (1973). In light of the problems that a contrary conclusion would present under the due process clause and the first amendment, that principle must apply in the case of a referendum held by a certified bargaining representative to determine whether it will affiliate with a national or international labor organization.

CONCLUSION

In holding that it will not enforce continued recognition of a newly affiliated union as an exclusive bargaining representative where all bargaining unit employees were not permitted to participate in the affiliation decision, the Board correctly applied the statutory and constitutional principles of individual free choice and due process of law. The judgment of the Ninth Circuit should be reversed and the Board's order reinstated.

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On Writ of Certiorari to the
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BRIEF OF AMICUS CURIAE THE LEGAL FOUNDATION OF AMERICA

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BRIEF OF AMICUS CURIAE, THE LEGAL FOUNDATION OF AMERICA

INTEREST OF AMICUS CURIAE

The Legal Foundation of America ("LFA") is a nonprofit corporation supporting the operations of a public interest law firm as that term is defined in IRS regulations. LFA is located on the campus of the South Texas College of Law in Houston and shares certain personnel and activities with the law school. Its goals, among others, include the preservation of the market system of resource allocation, the attainment of a better balance between the federal government and the States, and the furtherance of individual political and economic liberties. In pursuit

of its purpose to enhance the function of the market system, LFA has frequently appeared as amicus curiae in cases involving labor issues both in this Court and in lower courts. All litigation undertaken by LFA is approved by its Board of Trustees, which consists of attorneys, businesspeople and academics.

SUMMARY OF ARGUMENT

The Ninth Circuit Court of Appeals failed to follow the prior decisions of this Court requiring deference to decisions of the National Labor Relations Board in applying the NLRA, by substituting its own judgment for that of the Board.

The Ninth Circuit's decision further fails to follow the statutory requirement that the bargaining representative be selected by *all* employees, by allowing an affiliation decision to be made on the basis of a vote of union members only, which may well be a *minority* of all employees. The non-union member has no voice in the selection and has no really satisfactory way to challenge the selection after it has occurred. The approach approved by the Ninth Circuit thus leads to labor unrest and divisiveness, which is the antithesis of one of the primary purposes of the NLRA—the promotion and preservation of labor peace.

ARGUMENT

I. THE COURT OF APPEALS FAILED TO FOLLOW THE PRIOR DECISIONS OF THIS COURT.

The prior decisions of this Court, which are reflected in the decision of the Fifth Circuit in *Local Union No. 4-14 v. NLRB*, 721 F.2d 150 (5th Cir. 1983),[1] establish the rule of deference to

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1 The Fifth Circuit found the NLRB rule to be within "the wide discretion of the Board to establish procedures in an affiliation election that will ensure the fair and free choice of the bargaining representative of all the employees." 721 F.2d at 153.

Board interpretations of the NLRA. [2] This rule is followed unless the Board's interpretation is irrational or inconsistent with the Act. [3] The decision of the court below fails to give such deference. [4]

II. THE DECISION BELOW IS INCONSISTENT WITH BOTH THE EXPRESS PROVISIONS AND THE OVERALL PURPOSE OF THE NATIONAL LABOR RELATIONS ACT.

The NLRA provides that the union is to represent all employees, whether members or not. [5] All employees surrender

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2 This Court emphasized this just last year in Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 104 S.Ct. 2778 (1984), when it stated:

> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations.

Id. at 2782 (footnote omitted).

3 This Court has consistently upheld Board decisions when the Board is not "irrational or arbitrary" and does not "exceed its powers or venture into an area barred by the statute," NLRB v. Erie Resistor Corp., 373 U.S. 221, 236 (1963), making it clear that the "judicial role is narrow" in such cases. Beth Israel Hospital v. NLRB, 437 U.S. 483, 501 (1978).

4 The Ninth Circuit compared the prior NLRB rule with the new rule and decided that the earlier rule was adequate, making it "irrational" to adopt the new rule. Financial Institute Employees, Local No. 1182 v. NLRB, 738 F.2d 1483, 1492-1493 (9th Cir. 1984). In doing so, the court substituted its judgment for that of the NLRB.

5 Section 7 provides that employees "shall have the right . . . to bargain collectively through representatives of their own choosing . . ." 29 U.S.C. sec. 157 (1973). Section 9(a) provides that these representatives which are "designated or selected . . . by the majority of the employees . . . shall be the exclusive representatives of all the employees . . ." 29 U.S.C. sec. 159(a) (1973).

their individual bargaining rights to this exclusive bargaining representative. For this reason, the NLRA also provides that the exclusive bargaining representative is to be chosen by all employees.[6] The decision of the court below would defeat this purpose by disenfranchising non-union employees when the representative changes.[7]

A. The decision below allows the certification of a union that is not acceptable to a majority of employees.

The decision below enables unions to obtain certification of bargaining representatives that could not otherwise be elected, by initially electing a representative acceptable to the majority of employees and then affiliating on the basis of a minority vote, restricted to union members only. Although the Board may prevent this result in its certification decision,[8] such situations have occurred[9] and, under the approach approved by the lower court, are likely to occur in the future. For example, in *North Electric Company*, 165 N.L.R.B. 942, 943 (1967), the NLRB actually certified a representative, after a union-only election, that all employees had rejected by majority vote just fifteen months earlier.

This "minority rule" effect can also be seen in the vote in the instant case. As the dissent points out, with only union members participating in the vote, the affiliation decision was made on the basis of an affirmative vote of 1206 member employees out of a bargaining unit of about 4800 employees, or

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6 Id.

7 738 F.2d at 1493.

8 In Bedford Gear & Machine Products, Inc., 150 N.L.R.B. 1 (1964), the Board denied such a motion, stating that "granting such a motion in circumstances such as this would in effect result in the certification of the very union which less than a year before had been rejected by a majority of the employees." Id. at 2.

9 See North Electric Company, 165 N.L.R.B. 942 (1967).

about 25% of the unit. Since only the 2824 union members were given the opportunity to vote, and 774 of those voted against the affiliation,[10] the result could have been significantly different if all employees had been given the opportunity to participate in choosing the exclusive agent that would bargain for all of them.

The disadvantages of such "minority rule" are significant. First, it increases the probability of jurisdictional warfare between unions, with employees and firms caught in the middle. Thus the dissent in *North Electric Company, supra*, warns that "the amendment process may in the future be utilized to facilitate raiding between unions."[11] Secondly, the decision means that a few opinion leaders within the union can decide the result, and it thus increases the incentive to use improper means of persuasion, including special inducements to those individuals by a raiding union. Finally, the decision enhances the likelihood that employees may be forced to be represented by a deeply unacceptable union—one that is corrupt, for example, or one that will represent some groups at the expense of others. These concerns would be reduced by proper following of the requirement of the NLRA that all employees have the right to vote in the selection of the bargaining representative. They are not at all remedied by the continuity determination which the lower court approves.[12] At the very least, these concerns demonstrate a rea-

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10 738 F.2d at 1495.

11 165 N.L.R.B. at 944.

12 The court mentions several factors which may be considered in the continuity determination. Id. at 1488. However, if the Board decides which factors to consider, and what weight to be given to those factors, the right of the employee to select a bargaining representative based on the factors he considers most important is seriously diluted. This Court has said of the selection of a bargaining representative that "Congress attached no conditions whatsoever to their [the employees'] freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide." Hill v. Florida ex rel. Watson, 325 U.S. 538, 541 (1945).

sonable basis for the Board's approach, which is all that is required. [13]

The lower court's opinion leaves the non-union employee, who wishes to exercise his right to have a voice in the choice of his representative, without viable options. He could join the union in order to vote, but the Act guarantees each employee the right to refrain from union activity. [14] This right should not have to be relinquished in order to exercise another right protected under the Act: the right to select one's own bargaining representative. [15] Further, if this right can only be exercised by joining the union, the result is to pressure employees to join the union, and this result violates the Act's position of neutrality. [16]

Likewise, provisions for decertification do not provide a viable option in most cases. An after-the-fact procedure can in no way replace the right to participate in the initial election, and because of the presumptions and other difficulties built into the decertification process, [17] an employee who does not agree with

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13 Beth Israel, 437 U.S. at 501.

14 29 U.S.C. sec. 157 (1973).

15 Id.

16 In NLRB v. Savair Mfg. Co., 414 U.S. 270 (1973), this Court found a waiver of initiation fees to all employees who signed union authorization cards prior to a certification election to be an impermissible influence in favor of unionization. As the Court said in that case:

> Any procedure requiring a 'fair' election must honor the right of those who oppose a union as well as those who favor it. The Act is wholly neutral when it comes to that basic choice.

Id. at 278.

17 The Ninth Circuit describes these procedures to illustrate the policy of preserving stability in the bargaining structure. 738 F.2d at 1491-1492. However, that discussion by the Court also illustrates the difficulties faced by a non-member who wants some input regarding the bargaining representative. The court describes the

a Board determination of continuity and is not satisfied that the new bargaining representative is indeed the choice of the majority of the unit faces a heavy burden in protecting his rights.

B. The decision below interferes more with industrial peace than does the NLRB rule which it rejects.

If the majority of employees are deeply dissatisfied with the choice of representative, the lower court rule provides them no alternative but to seek decertification. Such an effort, whether successful or not, will be divisive, will create animosities, and will foster the very perceptions of unfairness that the democratic processes of the Act are designed to avoid. Although the court below stated that its approach would promote "labor peace,"[18] that approach actually interferes with that goal.

The lower court's approach also interferes with labor peace to the extent that it facilitates "raiding" between unions. Union members will likely be subjected to more frequent and more intense pressures to affiliate with other unions, "a result which could only increase industrial strife."[19]

Further, as Petitioner Seattle-First National Bank has pointed out, the disruption in the instant case occurred because of the union's refusal to follow Board sanctioned procedures in effect at the time. If those procedures had been followed, and if the employees had in fact voted for a new representative, a transition could have occurred smoothly. Thus the only situations in which the Board's rule is likely to be disruptive are those

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presumptions of majority status that a certified union enjoys, the fact that decertification will not even be considered by the Board without a petition of 30% of the employees of the unit, or a showing of "extreme" circumstances, and the contract-bar rule, which allows no decertification elections during the life of the contract. Id.

18 738 F.2d at 1491.

19 North Electric Company, 165 N.L.R.B. at 944.

in which the union refuses to follow the rule or in which there is real doubt as to the acceptability to the majority of the union which is being proposed. The Board's rule simply includes all employees in an election that must be held in any event and that would otherwise differ only in its underinclusiveness; thus the Board's rule not only protects the rights of all employees, but does so with no significant increase in effort or expense.[20]

The court below suggests that the new rule is disruptive because under it "an affiliation decision will always call a union's continuing majority status into question."[21] There can be no "*continuing* majority status," however, when the bargaining representative changes. In any event, the Board rather than the Ninth Circuit is the body with expertise to resolve questions that thus require interpretation of policies underlying the Act.

CONCLUSION

The decision of the Ninth Circuit Court of Appeals should be reversed.

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20 The court below characterized the affiliation decision (erroneously, it is submitted) as merely "an internal union affair." The policy of noninterference with internal union affairs is not challenged here. Since an affiliation decision involves the very identity of the bargaining representative, it cannot be an "internal" decision, but must recognize the statutory right of all employees to participate. At a minimum, the question requires judicial deference to the Board's expertise.

21 738 F.2d at 1486.

Respectfully submitted,

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